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April	17, 1998 - Issue 16: Through	March	31, 1998
July	17, 1998 - Issue 29: Through	June	30, 1998
October	16, 1998 - Issue 42: Through	September	30, 1998
January	15, 1999 - Issue 3: Through	December	31, 1998 (Annual)

REGISTER PUBLICATION SCHEDULE 1998

Material Rec'd before 4:30 p.m. on:	Will be in Issue #:	Published on:
July 13, 1998	30	July 24, 1998
July 20, 1998	31	July 31, 1998
July 28, 1998	32	Aug. 7, 1998
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Dec. 14, 1998	52	Dec. 28, 1998
Dec. 21, 1998	1	Jan. 4, 1999
Dec. 28, 1998	2	Jan. 8, 1999

*Please note: If the state holiday falls on a Monday, the deadline will be 12 noon on Tuesday (the next day).

STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULES

1) Heading of the Part: Procurement by the State Board of Education

2) Code Citation: 23 Ill. Adm. Code 165

3) Section Numbers: Proposed Action:

165.05 New Section
 165.10 New Section
 165.15 New Section
 165.25 New Section
 165.525 New Section
 165.1005 New Section
 165.1510 New Section
 165.1560 New Section
 165.1570 New Section
 165.1580 New Section
 165.2005 New Section
 165.2010 New Section
 165.2012 New Section
 165.2015 New Section
 165.2020 New Section
 165.2025 New Section
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 165.2035 New Section
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 165.4005 New Section
 165.4505 New Section
 165.4510 New Section
 165.4530 New Section
 165.4535 New Section
 165.4540 New Section
 165.4545 New Section
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 165.5013 New Section
 165.5015 New Section
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NOTICE OF PROPOSED RULES

165.5030 New Section
 165.5035 New Section
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 165.6010 New Section
 165.6500 New Section
 165.6510 New Section
 165.6520 New Section
 165.6530 New Section
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 165.7010 New Section
 165.7015 New Section
 165.7020 New Section
 165.7025 New Section
 165.7030 New Section

4) Statutory Authority: 30 ILCS 500/1-30.

5) A Complete Description of the Subjects and Issues Involved: These rules set forth the procedures to be used by the State Board of Education for procuring supplies and services, other than standard employment of personnel, necessary for carrying out the duties of the State Board of Education, in accordance with the requirements of the Illinois Procurement Code [30 ILCS 500].

6) Will these proposed rules replace an emergency rule currently in effect?
 Yes

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed rules contain incorporations by reference? The rules do not contain an incorporation by reference under Section 5-75 of the Illinois Administrative Procedure Act.

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking will not create or enlarge a state mandate.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days of the publication of this notice to:

Sally Vogl
 Agency Rules Coordinator

STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULES

Illinois State Board of Education
100 North First Street, S-284
Springfield, Illinois 62777-0001
(217) 782-3950

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected: The main purpose of these rules is to regulate the actions of the State Board of Education. Small businesses are indirectly affected if they choose to submit bids or proposals in response to procurement actions by the agency.
- B) Reporting, bookkeeping or other procedures required for compliance: If awarded a contract, a business will have to comply with the requirements of Section 165.7020 regarding recordkeeping and audits.
- C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: The rulemaking was not included on the July 1998 agenda since the status of the agency under the Illinois Procurement Code, which would affect how the rulemaking would be conducted, was still being considered.

The full text of the Proposed Rule(s) begins on the next page:

STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULES

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER I: STATE BOARD OF EDUCATION
SUBCHAPTER C: FINANCE

PART 165

PROCUREMENT BY THE STATE BOARD OF EDUCATION

SUBPART A: GENERAL

Section	Policy
165.05	Application
165.10	Definitions of Terms Used in this Part
165.15	Property Rights
165.25	

SUBPART B: PROCUREMENT RULES

Section	Applicability of Rules
165.525	
	SUBPART C: PROCUREMENT AUTHORITY

Section	Exercise of Procurement Authority
165.1005	

SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

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165.1510	Supplemental Notice
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SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

Section	General Provisions
165.2005	Competitive Sealed Bidding
165.2010	Multi-Step Sealed Bidding
165.2012	Competitive Sealed Proposals
165.2015	Small Purchases
165.2020	Sole Economically Feasible Source Procurement
165.2025	Emergency Procurements
165.2030	Competitive Selection Procedures for Professional and Artistic Services
165.2035	Other Methods of Source Selection
165.2036	

STATE BOARD OF EDUCATION

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 165.2038 Mistakes
 165.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

Section
 165.2043 Suppliers
 165.2044 Vendor Lists
 165.2046 Responsibility

SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

Section
 165.2047 Security Requirements

SUBPART H: SPECIFICATIONS

Section
 165.2050 Specifications

SUBPART I: CONTRACT TYPE

Section
 165.2055 Types of Contracts

SUBPART J: DURATION OF CONTRACTS

Section
 165.2060 Duration of Contracts - General

SUBPART K: CONTRACT MATTERS

Section
 165.2560 Prevailing Wage
 165.2570 Equal Employment Opportunity; Affirmative Action

SUBPART L: CONTRACT PRICING

Section
 165.2800 All Costs Included

SUBPART M: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

Section
 165.4005 Real Property Leases and Capital Improvement Leases

SUBPART N: PREFERENCES

STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULES

Section
 165.4505 Procurement Preferences
 165.4510 Resident Bidder Preference
 165.4530 Correctional Industries
 165.4535 Sheltered Workshops for Persons with Disabilities
 165.4540 Gas Mileage
 165.4545 Small Business
 165.4570 Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities

SUBPART O: ETHICS

Section
 165.5013 Conflicts of Interest
 165.5015 Negotiations for Future Employment
 165.5020 Exemptions
 165.5030 Revolving Door
 165.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

SUBPART P: COMPLAINTS, PROTESTS AND REMEDIES

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 165.5510 Complaints Against Vendors
 165.5520 Suspension
 165.5530 Resolution of Contract Controversies
 165.5540 Violation of Statute or Rule
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SUBPART Q: SUPPLY MANAGEMENT AND DISPOSITIONS

Section
 165.6010 Supply Management and Dispositions

SUBPART R: GOVERNMENTAL JOINT PURCHASING

Section
 165.6500 General
 165.6510 No Agency Relationship
 165.6520 Obligations of Participating Governmental Units
 165.6530 Use of Other Contracts

SUBPART S: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

Section
 165.7000 Severability
 165.7010 Government Furnished Property
 165.7015 Inspections

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NOTICE OF PROPOSED RULES

solicitation must have been postmarked or placed in the control of a private carrier no later than June 30, 1998; if the procurement was by direct solicitation by facsimile machine (fax), the fax must show a transmission date no later than June 30, 1998;

C) if the procurement was solicited in person or by telephone, the solicitation must have occurred no later than June 30, 1998.

D) In all circumstances, the solicitations must be for the procurement of particular needs.

- f) The Code and this Part do not apply to:
- 1) Contracts between the State and its political subdivisions or other governments, or between State governmental bodies except as specifically provided in this Code. (For the purposes of this subsection (f), "governmental bodies" includes the State universities and their governing boards, community colleges and their governing boards, and school districts.)
 - 2) Grants;
 - 3) Hiring of an individual as employee and not as an independent contractor, whether pursuant to an employment code or policy or by contract directly with that individual;
 - 4) collective bargaining contracts;
 - 5) purchase of real estate; or
 - 6) contracts necessary to prepare for anticipated litigation, enforcement actions, or investigations, provided that the chief legal counsel to the SBE shall give his or her prior approval [30 ILCS 500/1-10(b)]. Anticipated litigation is that which the SBE may prosecute or defend before a court or administrative body and actions necessary to prepare for and conduct the effective legal prosecution or defense of litigation, including, but not limited to, contracting for expert witnesses and for court reporter services.

Section 165.15 Definitions of Terms Used in this Part

As used throughout this Part, terms defined in the Illinois Procurement Code shall have the same meaning as in the Code and as further defined below, and each term listed in this Section shall have the meaning set forth below unless its use clearly requires a different meaning. Terms may be defined in particular in particular Sections for use in that Section.

"Bid" - The response to an Invitation for Bids.

"Bidder" - Any person who submits a bid.

"Brand Name or Equal Specification" - A specification that uses one or more manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to

STATE BOARD OF EDUCATION
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165.7020 Records and Audits
165.7025 Written Determinations
165.7030 No Waiver of Sovereign Immunity

AUTHORITY: Implementing the Illinois Procurement Code [30 ILCS 500] and authorized by Section 1-30(a) of that Code.

SOURCE: Emergency rules adopted at 22 Ill. Reg. 7351, effective September 21, 1998, for a maximum of 150 days; new Part adopted at 23 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 165.05 Policy

All procurements by the Illinois State Board of Education (SBE) shall be accomplished in the most economical, expeditious and commercially reasonable manner that is in accordance with statute, this Part and other applicable rules.

Section 165.10 Application

- a) Articles 1, 15, 20, 25, 35, 40, 45, 50, and 53 of the Illinois Procurement Code [30 ILCS 500] (the Code) will be referenced herein as though applicable to the SBE, and all procurements of supplies or services conducted by the SBE shall be substantially in accordance with those provisions of the Code, except to the extent otherwise provided in this Part.
- b) For the purposes of the Code and this Part, any reference to Chief Procurement Officer (CPO) means the State Superintendent of Education or his or her designee. The State Superintendent may appoint one or more State Purchasing Officer(s) (SPO).
- c) The Code and this Part apply to those procurements for which the vendors were first solicited on or after July 1, 1998 [30 ILCS 500/1-10(a)].
- d) procurements for which vendors were first solicited on or before June 30, 1998, shall be conducted pursuant to the legal requirements in effect at the time of the solicitation. The terms and conditions and the rights and obligations under contracts resulting from such procurements shall not be impaired.
- e) A solicitation occurs on or before June 30, 1998, as follows:
 - 1) When advertising was required in the Official State Newspaper, the first advertisement must run no later than June 30, 1998.
 - 2) When advertising was not required:
 - A) if the procurement was advertised, even though advertising was not required, the first advertisement must have run no later than June 30, 1998;
 - B) if the procurement was by direct solicitation by mail, the

STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULES

meet State requirements, and that allows the submission of equivalent products.

"Brand Name Specification" - A specification limited to one or more items by manufacturers' names or catalogue numbers.

"Code" - The Illinois Procurement Code [30 ILCS 500].

"Consulting Services" - Services provided by a business or person as an independent contractor to advise and assist in solving specific management or programmatic problems involving the organization, planning, direction, control, or operations of SBE. The service may or may not rise to the level of professional and artistic services as defined in the Code and Section 165.2035(a) of this Part.

"Contract" - The term contract as used in the Code and this Part includes, but is not limited to, purchase, installment purchase, lease and rental contracts, and includes any agreement or lease that requires the payment of State funds by the SBE in exchange for supplies or services. A contract may be in written or oral form. The term contract does not include: supplies or services the terms governing which are established by tariff of the Illinois Commerce Commission or the Federal Communications Commission, bonds or contracts relating to bonds issued by or on behalf of a State agency when the contractor or vendor is neither selected nor paid by the State agency.

"Contractor" or "Vendor" - The terms contractor and vendor are used interchangeably for purposes of the Code and this Part.

"Day" - Calendar day. In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a State holiday, in which event the period shall run to the end of the next business day.

"Items" - Anything that may be procured under this Code.

"Invitation for Bids" or "IFB" - The process by which the purchasing agency requests information from bidders, including all documents, whether attached or incorporated by reference, used for soliciting bids. [30 ILCS 500/1-15.45]

"Proposal" - The response to a Request for Proposals.

"Qualified Products List" - An approved list of supplies described by model or catalogue numbers that, prior to competitive solicitation, the SBE has determined will meet the applicable specification

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requirements.

"Procurement Officer" - The Chief Procurement Officer (CPO) or the appointed State Purchasing Officer(s) (SPO) who conducts the particular procurement, or a designee of either.

"Request for Proposals" or "RFP" - The process by which the purchasing agency requests information from offerors, including all documents, whether attached or incorporated by reference, used for soliciting proposals. [30 ILCS 500/1-15.75]

"Responsive Bidder" - A person who has submitted a bid that conforms in all material respects to the Invitation for Bids. [30 ILCS 500/1-15.85]

"Responsible Offeror" - A person who has submitted an offer that conforms in all material respects to the Request for Proposals.

"Service" - The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports or supplies that are incidental to the required performance and the financing thereof. [30 ILCS 500/1-15.90]

"Specification" - Any description of the physical, functional, or performance characteristics, or of the nature, of a supply or service. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply or service item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout this Part.

"Specification for a Common or General Use Item" - A specification that has been developed and approved for repeated use in procurements.

"State Agency" - Includes all boards, commissions, agencies, institutions, authorities, and bodies politic and corporate of the State, created by or in accordance with the constitution or statute, of the executive branch of State government and does include colleges, universities, and institutions under the jurisdiction of the governing boards of the University of Illinois, Southern Illinois University, Illinois State University, Eastern Illinois University, Northern Illinois University, Western Illinois University, Chicago State University, Governor State University, Northeastern Illinois University, and the Board of Higher Education. However, this term does not apply to public employee retirement systems or investment boards that are subject to fiduciary duties imposed by the Illinois Pension Code or to the University of Illinois Foundation. "State Agency" does not include units of local government, school districts, community colleges under the Public Community College Act, and the

STATE BOARD OF EDUCATION

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Illinois Comprehensive Health Insurance Board. [30 ILCS 500/1-15.100]

"Supplies" - All personal property, including but not limited to equipment, materials, printing, and insurance, and the financing of those supplies. [30 ILCS 500/1-15.110]

"Unsolicited Offer" - Any offer other than one submitted in response to a solicitation.

Section 165.25 Property Rights

Receipt of an Invitation for Bids or other procurement document, or submission of any response thereto, or other offer, confers no right to receive an award or contract, nor does it obligate the SBE in any manner.

SUBPART B: PROCUREMENT RULES

Section 165.525 Applicability of Rules

The SBE may, without soliciting independent bids, proposals, or responses, procure supplies and services from Master Contracts or other centralized purchasing agreements established by the Department of Central Management Services (DCMS) from vendors selected by DCMS in accordance with a competitive selection process established by DCMS under the Code, including, but not limited to, contracts for supplies and services for the following: telecommunications, electronic data processing, software, photocopying, vehicles, printing, and paper and envelopes.

SUBPART C: PROCUREMENT AUTHORITY

Section 165.1005 Exercise of Procurement Authority

The State Superintendent of Education or his or her designee shall serve as CPO for purposes of the Code and may conduct any or all procurements for the SBE. The CPO may appoint one or more employees under his or her direction and supervision to serve as SPOs and to conduct procurements on behalf of the CPO in accordance with conditions specified in the terms of the appointment.

SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

Section 165.1510 Illinois Procurement Bulletin

- a) Notice of any procurement action, by or on behalf of the SBE, that would be required by the Code to be published in the Illinois Procurement Bulletin if the SBE were a "State Agency" shall be included in the appropriate volume of the Bulletin.
- b) The Bulletin may be supplemented at the discretion of the SBE with publication elsewhere, including in the Official State Newspaper

STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULES

selected by DCMS.

c) The notice shall contain at least the following information:

- 1) the name of the procuring agency;
- 2) a brief purchase description;
- 3) a procurement reference number, if used;
- 4) the date the procurement is first offered;
- 5) the date, time, and location for making submissions;
- 6) the method of source selection;
- 7) the name of the Procurement Officer in charge; and
- 8) instructions on how to obtain detailed information.

d) Notice of each contract awarded that was the subject of a notice in subsection (c) of this Section shall be placed in the Bulletin. This notice shall contain at least the following information:

- 1) the information published in subsection (c) of this Section;
- 2) the name of the vendor selected for award;
- 3) the contract price;
- 4) the number of unsuccessful responsive vendors; and
- 5) other disclosures required to be published in the Bulletin.

e) The following information regarding emergency procurements shall be published in the Bulletin within 14 days after commencement of performance under the emergency contract:

- 1) name of the procuring agency;
- 2) name of the vendor selected for award;
- 3) brief description of what the vendor will do or provide;
- 4) total price (if only an estimate is known, it shall be published, but a subsequent notice repeating all required information shall be published when the final amount is known);
- 5) reasons for using the emergency method of source selection; and
- 6) name of the Procurement Officer in charge.

f) The following information in regard to sole source procurements shall be published in the Bulletin at least 14 days prior to entering into the contract with the designated sole source vendor:

- 1) name of the procuring agency;
- 2) name of the vendor;
- 3) brief description of what the vendor will do or provide; and
- 4) name of the Procurement Officer in charge.

Section 165.1560 Supplemental Notice

Publication in the Bulletin may be supplemented by publication elsewhere at the discretion of the SBE. Examples include publication in:

- a) the Official State Newspaper selected by DCMS;
- b) a newspaper of general circulation;
- c) a newspaper of local circulation in the area pertinent to the procurement;
- d) industry media; or
- e) the SBE's "Web" pages.

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Section 165.1570 Error in Notice

When a required publication contains an error, the error may be corrected by a single notice published in the Bulletin.

Section 165.1580 Direct Solicitation

In addition to giving notice in the Bulletin, the SBE may directly contact prospective vendors by providing copies of Invitations for Bids, Requests for Proposals, or other procurement information. Direct solicitation may be oral or in writing, but care should be taken to ensure that all vendors solicited in this manner receive the same information as provided to others. No direct solicitation shall be made prior to the date any required notice first appears in the Bulletin.

SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION**Section 165.2005 General Provisions**

a) Late bids or proposals are those received after the time and date for receipt and those received at other than the specified location. A bid that is delivered to the wrong location but that is subsequently delivered to the correct location by the date and time specified shall be considered, but the SBE shall not be responsible for ensuring such subsequent delivery. Any withdrawal or modification of a bid or proposal shall be considered late if it is received after the time and date set for opening of bids or proposals. If it is received at other than the specified location, the submission is late.

1) No late bid or proposal, late modification, or late withdrawal shall be considered unless the CPO determines that it would have been timely but for the action or inaction of State personnel directly serving the procurement activity (e.g., providing the wrong address).

2) Records shall be made and, in accordance with the State Records Act [5 ILCS 160], kept for each late bid or proposal, late modification, or late withdrawal.

3) Any other submission that has a time or date deadline shall be treated in the same manner as a late bid.

b) Extension of Time

1) The Procurement Officer may, prior to the date or time for submitting or modifying a bid or proposal, extend the date or time for the convenience of the SBE.

2) After opening bids or proposals, the Procurement Officer may request bidders or offerors who submitted timely bids or proposals to extend the time during which the SBE may accept the bids or proposals, provided that, with regard to bids, no other change is permitted. This extension does not provide an opportunity for others to submit bids or proposals.

STATE BOARD OF EDUCATION

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c) The Invitation for Bids or Request for Proposals may state that electronic and fax submissions shall be considered if they are received at the designated office by the time and date set for receipt. Any required attachments shall be submitted as stated in the IFB or RFP.

1) Electronic submissions authorized by specific language in the IFB or RFP shall be opened in accordance with electronic security measures in effect at the SBE at the time of opening. Unless the electronic submission procedures provide for a secure receipt, the vendor assumes risk of premature disclosure due to submission in unsealed form.

2) Fax submissions authorized by specific language in the IFB or RFP shall be placed in a sealed container upon receipt and opened as other submissions. The vendor assumes risk of premature disclosure due to submission in unsealed form.

d) The Invitation for Bids or the Request for Proposals may require that vendors submit, by a certain time and date, a notice of their intent to submit a bid or proposal in response to the IFB or RFP. Bids and proposals submitted without complying with the notice of intent requirement may be rejected.

e) If only one bid or proposal is received, an award may be made to the single bidder or offeror if the Procurement Officer finds that the price submitted is fair and reasonable, and either that other prospective bidders had reasonable opportunity to respond or that there is not adequate time for resolicitation. Otherwise:

1) new bids or offers may be solicited, including under sole source (see Section 165.2025 of this Part) or emergency (see Section 165.2030 of this Part) procedures, or

2) The procurement may be canceled.

f) Alternate bids or proposals may be accepted if:

1) permitted by the solicitation and in accordance with instructions in the solicitation; or

2) only one vendor responded, in which case the alternate submission may be evaluated and treated in accordance with sole source procurement procedures (see Section 165.2025 of this Part); or

3) the low bidder, who has met all requirements of the solicitation, has provided a lower cost alternative that meets all of the material requirements of the specifications.

g) Multiple bids or proposals may be accepted if:

1) permitted by the solicitation and submitted in accordance with instructions in the solicitation; or

2) only one vendor responded; then one or more of the submissions may be evaluated, provided that, in the case of bids, only the lowest cost bid meeting specifications may be considered.

h) If a vendor clearly indicates a primary submission among alternate or multiple bids or proposals, then that primary submission shall be considered for award as though it were the only bid or proposal submitted by the vendor.

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- i) An Invitation for Bids or Request for Proposals may call for pricing of multiple items of similar or related type with award based on individual line item, group total of certain items, or grand total of all items.
- j) All or none bids or proposals may be accepted if the evaluation shows an all or none award to be the lowest cost or best value of those submitted.
- k) Any bid or proposal that is conditioned upon receiving award of the particular contract being solicited and one or more other SBE contracts shall:
- 1) be rejected unless the vendor removes the condition; or
 - 2) be evaluated and award made to that vendor if the vendor is also independently evaluated as the winner of the other contract(s), provided that the SBE not delay procurement actions to accommodate the vendor's all or none condition.
- l) The CPO May Consider Unsolicited Offers
- 1) An unsolicited offer shall be in writing and shall be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the SBE.
 - 2) An award may not be made based on an unsolicited offer in place of the notice and competition requirements of the Code and this Part, except if that unsolicited offer meets the requirements for small, sole source or emergency procurement (see Section 165.2020, Section 165.2025 or Section 165.2030 of this Part, respectively).
- m) The Procurement Officer may request that a vendor clarify its bid or proposal as a part of the evaluation process. A vendor shall not be allowed to materially change its bid or proposal in response to a request for clarification. A clarification is not an opportunity to make changes or for submission of best and finals as authorized elsewhere in this Part.
- n) The time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for 90 days or less and the Procurement Officer determines in writing that it is not practical to award another contract at the time of such extension.
- o) The quantity that may be ordered from a definite quantity contract without additional notice and competition may be increased by up to 20 percent, provided that the CPO determines that separate bidding for the additional quantity is not likely to achieve lower pricing. A particular procurement may specify a different percentage. The quantity may be increased by any percentage provided that the dollar value of the increase does not exceed the applicable small purchase threshold (see Section 165.2020(a) of this Part).
- p) Assignment, Novation or Change of Name
- 1) Assignment. No State contract is transferable, or otherwise assignable, without the written consent of the Procurement Officer, provided, however, that a vendor may assign money

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- receivable under a contract after due notice to the SBE. Assignment may require the execution of a contract with the assignee and in such cases the assignee shall meet all requirements for contracting with the State.
- 2) Recognition of a Successor in Interest; Novation. When in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee agree that:
- A) the transferee assumes all of the transferor's obligations;
 - B) the transferee meets all requirements for contracting with the State;
 - C) the transferor waives all rights under the contract as against the SBE; and
 - D) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required by the SBE, furnish a satisfactory performance bond.
- 3) Change of Name. A vendor may submit to the Procurement Officer a written request to change the name in which it holds a contract with the State. The name change shall not alter any of the terms and conditions of the contract or the obligations of the vendor.
- q) Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including the Bond Authorization Act [30 ILCS 305].
- r) If the SBE uses a method of source selection that it is not, by law, required to use (e.g., use of a competitive sealed bid for a small purchase), it is not bound to strict compliance with the Code and rules governing the method of source selection used.
- s) A bid or proposal submitted unsigned shall be evaluated if the vendor submits a written signature acceptable to the Procurement Officer within the time specified by that officer.
- t) Stringing (dividing or planning procurements to avoid use of competitive procedures) is prohibited.
- u) Vendors shall clearly identify any information that is exempt from the disclosure requirement of the Illinois Freedom of Information Act [5 ILCS 140] and must request special handling of that material.

Section 165.2010 Competitive Sealed Bidding

Competitive sealed bidding is the required method of source selection except as allowed by the Code and this Part. The provisions of this Section apply to every procurement required to be conducted by competitive sealed bidding.

- a) The Invitation for Bids is used to initiate a competitive sealed bid procurement and shall include, at a minimum, the following:
- 1) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, and the maximum time for bid acceptance by the SBE;

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- 2) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description;
 - 3) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable; and
 - 4) if other documents are incorporated by reference, the specific location of where such documents can be obtained.
- b) Bidding time is the period of time between the date of notice or distribution of the Invitation for Bids and the time and date set for receipt of bids. In each case, bidding time shall be set to provide bidders a reasonable time to prepare their bids. A minimum of 14 days shall be provided unless a shorter time is authorized by the Code or this Part.
- c) The Invitation for Bids may include a form or format for submitting bids. If a form or format is specified, the vendor shall submit bids as instructed.
- 1) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.
 - 2) Unsolicited bid samples or descriptive literature is submitted at the bidder's risk, may not be examined or tested, will not be deemed to vary any of the provisions of the Invitation for Bids, and may not be utilized by the vendor to contest a decision or understanding with the State.
- d) Public Notice
- 1) Every procurement for supplies and services in excess of the small purchase amount set forth in Section 165.2020(a) of this Part that shall be procured using an Invitation for Bids shall be publicized in the Illinois Procurement Bulletin (see Section 165.1510(a) of this Part).
 - 2) A copy of the Invitation for Bids shall be made available for public inspection.
 - 3) Invitations for Bids or Notices of the Availability of Invitations for Bids may be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of Availability shall, at a minimum, indicate where Invitations for Bids may be obtained, generally describe what is needed, and indicate the due date for bids. Where appropriate, the Procurement Officer may require payment of a fee or a deposit for supplying the Invitation for Bids.
- e) A bidders' conference may be conducted to enhance understanding of the procurement requirements. The bidders' conference shall be announced as a part of the Invitation for Bids' notice.
- 1) The conference may be designated as "attendance mandatory" or "attendance optional."
 - 2) The date set for the conference should be long enough after the Invitation for Bids has been issued to allow bidders to become familiar with its provisions, but sufficiently before bid opening to allow consideration of the conference results in preparation

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of bids.

- 3) Nothing stated at the bidders' conference shall change the Invitation for Bids unless a change is made by written modification to the Invitation for Bids. Amendments shall be supplied to all those prospective bidders known to have received an Invitation for Bids. If the conference is mandatory, the amendment shall be supplied to attendees only.
- f) Amendments to Invitations for Bids shall be clearly identified and shall reference that portion of the IFB that is being amended.
- 1) Amendments shall be made available to all prospective bidders known to have received an Invitation for Bids.
 - 2) Amendments shall be made available within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the amendment shall extend the response time. If necessary, the response time may be extended by fax or telephone and confirmed in the amendment.
- g) Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening.
- 1) If a bid is withdrawn in accordance with this subsection (g), the bid security, if any, shall be returned to the bidder.
 - 2) All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.
- h) Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. If a bid is opened in error, the file shall so state.
- 1) Bids and modifications shall be opened publicly at the time, date, and place designated in the Invitation for Bids. Opening shall be witnessed by a SBE employee and any other person present. The name of each bidder, the bid price, and such other information as is deemed appropriate shall be recorded and the name of each bidder read aloud or otherwise made available. The name of the witness shall also be recorded at the opening.
 - 2) The winning bid shall be available for public inspection after award, along with the record of each unsuccessful bid.
- i) The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids, except as permitted in the Code and this Part. The Invitation for Bids shall set forth the requirements and criteria that shall be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids.
- 1) Responsibility of prospective vendors shall be determined in accordance with Section 165.2046 of this Part.
 - 2) To be considered responsive, a bid must conform in all material respects to the Invitation for Bids.

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A) The Invitation for Bids shall set forth any evaluation criteria to be used in determining product or service acceptability. It may require the submission of bid samples, descriptive literature, technical data, references, licenses, or other information or material. It may also provide for accomplishing any of the following prior to award:

- i) inspection or testing of a product or service prior to award for such characteristics as quality or workmanship;
- ii) examination of such elements as appearance, finish, taste, or feel;
- iii) other examinations to determine whether it conforms with any other purchase description requirements.

B) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's product or service capability is superior to another, but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering that does not meet the acceptability requirements shall be rejected.

3) Following determination of product or service acceptability as set forth in this subsection (1), bids shall be evaluated to determine which bidder offers the lowest cost to the SBE in accordance with the evaluation criteria set forth in the Invitation for Bids.

A) Only objectively measurable criteria that are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost and ownership or life-cycle cost formulas.

B) Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall be reasonable estimates based upon information the State has available concerning future use and shall provide for the equitable treatment of all bids.

C) Pricing for optional supplies or services, or for renewal terms, may be considered, particularly when the pricing for such items or terms is unbalanced when compared to other pricing in the bid.

4) Price negotiations are permitted with the low bidder to obtain a lower price for the item bid.

j) Following award, a record showing the successful bidder shall be made a part of the procurement file.

k) The CPO may award the contract to other than the lowest responsible and responsive bidder upon a written determination that award to another bidder is in the State's best interest.

l) Award to other than the lowest responsible and responsive bidder

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may be appropriate when the difference in quality or speed of delivery is so great as compared to the difference in price, and considering the needs of the SBE, that a best value award is justified.

- 2) The Procurement Officer may not utilize this provision when the difference in price is significant.
- 3) When other than the low bidder is chosen, the Procurement Officer shall publish in the Bulletin the name of the bidder selected, pricing, and the reasons for selecting this bidder.
- 1) The successful bidder shall be notified of award and such notification may be in the form of a letter, purchase order or other clear communication. Notice of award shall be published in the Bulletin (see Section 165.1510(d) of this Part).

Section 165.2012 Multi-Step Sealed Bidding

Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the SBE, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their priced bids considered.

a) The multi-step sealed bidding method may be used when it is not practical initially to prepare a definitive purchase description that will be suitable to permit an award based on price [30 ILCS 500/20-10(h)]. Multi-step sealed bidding may be used when it is considered desirable to:

- 1) invite and evaluate possible diverse technical offers to determine their acceptability to fulfill the purchase description requirements; and
- 2) conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description.

b) Prior to the submission or evaluation of unpriced technical offers, a bidders' conference, as prescribed by Section 165.2010(e) of this Part, may be conducted by the Procurement Officer.

c) Procedure for Phase One of Multi-Step Sealed Bidding

- 1) Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by Section 165.2010(a) of this Part, except as hereinafter provided. In addition to the requirements set forth in Section 165.2010(a) of this Part, the multi-step Invitation for Bids shall state:

- A) that unpriced technical offers are requested;
- B) whether priced bids are to be submitted at the same time as unpriced technical offers; if they are, such priced bids shall be submitted in a separate sealed envelope;
- C) that it is a multi-step sealed bid procurement, and priced

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bids shall be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

- D) the criteria to be used in the evaluation of the unpriced technical offers;
- E) that the Procurement Officer may conduct oral or written discussions of the unpriced technical offers; and
- F) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

- 2) After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers, and they shall be permitted to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the Procurement Officer, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids may be canceled in accordance with Section 165.2040 of this Part and a new Invitation for Bids issued.

- 3) Unpriced technical offers submitted by bidders shall be opened in the presence of at least one witness. Such offers shall not be disclosed to unauthorized persons.

- 4) The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

- A) acceptable;
- B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
- C) unacceptable, in which case the Procurement Officer shall record in writing the basis for finding an offer unacceptable, notify the vendor, and make the finding part of the procurement file.

- 5) The Procurement Officer may initiate phase two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds discussion of the technical offers is necessary, the Procurement Officer shall commence discussions of the unpriced technical proposals.

- 6) The Procurement Officer may conduct discussions with any vendor who submits an acceptable or potentially acceptable technical offer. During the course of such discussions, the Procurement Officer shall not disclose any information derived from one unpriced technical offer to any other bidder. Any such bidder may submit supplemental information amending its technical offer at any time until the closing date established by the Procurement

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Officer. Such submission may be made at the request of the Procurement Officer or upon the bidder's own initiative.

- 7) When the Procurement Officer determines a bidder's unpriced technical offer to be unacceptable, such offeror shall not be afforded an additional opportunity to supplement its technical offer.

d) Procedure for Phase Two

- 1) Upon the completion of phase one, the Procurement Officer shall either:

- A) open priced bids submitted in phase one (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or
- B) if priced bids have not been submitted, invite each acceptable bidder to submit a priced bid.

- 2) Phase two shall be conducted as any other competitive sealed bid procurement except:

- A) no public notice need be given of this invitation to submit priced bids because such notice was previously given; after award, the unpriced technical offer of the successful bidder shall be disclosed as follows: The Procurement Officer shall examine written requests of confidentiality for trade secrets and proprietary data in the technical offer of such bidder to determine the validity of any such requests. If the parties do not agree as to the disclosure of data, the Procurement Officer shall reject the offer. Such technical offer shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data; and
- C) unpriced technical offers of bidders who are not awarded the contract shall not be open to public inspection.

Section 165.2015 Competitive Sealed Proposals

Competitive Sealed Proposals may be used whenever permitted by the Code and as described in this Part.

- a) The Competitive Sealed Proposal method of source selection may be used to procure the following categories (note that the following services, if they are professional and artistic, shall be procured pursuant to Section 165.2035 of this Part):

- 1) electronic data processing equipment, software, and services;
- 2) telecommunications equipment, software, and services;
- 3) consulting services; and
- 4) employee benefits and management of those benefits.

- b) Competitive Sealed Proposals may be used on a case-by-case basis when it is determined by the Procurement Officer that competitive sealed bidding is either not practicable or not advantageous.

- 1) As used in Section 20-15 of the Code and in this Section, "practicable" denotes what may be accomplished or put into

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practical application, and "advantageous" connotes a judgmental assessment of what is in the State's best interest. Competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the State's best interest. Before a procurement can be conducted by competitive sealed proposals, the Procurement Officer shall determine in writing that competitive sealed bidding is either not practicable or not advantageous to the SBE [30 ILCS 500/20-15(a)].

2) The key element in determining whether use of competitive sealed proposals is advantageous is the need for flexibility. The competitive sealed proposal method differs from competitive sealed bidding in two important ways:

- A) it permits discussions with competing offerors and changes in their proposals, including price; and
- B) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

3) Use of competitive sealed proposals is the appropriate procurement method when evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise; when the types of supplies or services may require the use of comparative, judgmental evaluations to evaluate them adequately; or when the need to be satisfied involves weighing aesthetic values to the extent that price is a secondary consideration.

4) Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the Invitation for Bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

- A) whether the contract needs to be other than a fixed-price type;
- B) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- C) whether offerors may need to be afforded the opportunity to revise their proposals, including price;
- D) whether award may need to be based upon a comparative evaluation, as stated in the Request for Proposals, of differing price, quality, and contractual factors in order to determine the most advantageous offering to the State. Quality factors include technical and performance capability and the content of the technical proposal; and
- E) whether the primary consideration in determining award may not be price.

5) A determination may be made to use competitive sealed proposals

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if it is determined that it is not advantageous to the State, even though practicable, to use competitive sealed bidding. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

A) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State; and

B) whether the factors listed in subsection (b)(4) of this Section are desirable, in conducting a procurement, rather than necessary; if they are, then such factors may be used to support a determination that competitive sealed bidding is not advantageous.

c) The Request for Proposals shall be prepared in accordance with Section 165.2010(a) of this Part, provided that it shall also include:

- 1) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; and
- 2) a statement of when and how price should be submitted.

d) Proposals and modifications shall be opened publicly at the time, date and place designated in the Request for Proposals.

1) Opening shall be witnessed by a SBE employee and by any other person present. A record shall be prepared that shall include the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply or service item offered. The record of proposals shall be open to public inspection after award of the contract.

2) Proposals and modifications shall be opened in a manner to avoid disclosing contents to competitors. Only SBE personnel and contractual agents may review the proposals prior to award.

e) The Request for Proposals shall state all of the evaluation factors, including price, and their relative importance.

1) The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Factors not specified in the Request for Proposals shall not be considered. Numerical rating systems may be used but are not required.

2) For the purpose of conducting discussions, proposals may be initially classified as:

- A) acceptable;
- B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
- C) unacceptable. Offerors whose proposals are unacceptable shall be so notified promptly.

f) Proposal Discussions with Individual Offerors

1) For the purposes of Section 20-15(f) of the Code and of this Section, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses that submitted

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- unacceptable proposals.
- 2) Discussions are held to:
- A) promote understanding of the SBE's requirements and the offerors' proposals; and
 - B) facilitate arriving at a contract that will be most advantageous to the SBE, taking into consideration price and the other evaluation factors set forth in the Request for Proposals.
- 3) Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. If during discussions there is a need for any substantial clarification of, or change to, the Request for Proposals, the RFP shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.
- 4) The Procurement Officer may request best and final offers from those offerors whose proposals are deemed acceptable after completion of any discussions.
- A) Best and final offers shall be submitted by a specified date and time.
 - B) The Procurement Officer may conduct additional discussions or change the SBE's requirements and require another submission of best and final offers. The scope of the best and final and the number of vendors allowed to participate shall be defined by the Procurement Officer.
 - C) If an offeror does not submit either a notice of withdrawal or another best and final offer, that offeror's immediately previous offer will be construed as its best and final offer.
 - g) An award shall be made by the Procurement Officer pursuant to a written determination showing the basis on which the award was found to be most advantageous to the SBE, based on the factors set forth in the Request for Proposals.
 - h) The successful offeror shall be notified of award and such notification may be in the form of a letter, purchase order or other clear communication. When the award exceeds the small purchase limit set forth in Section 165.2020(a) of this Part, notice of award shall be published in the Bulletin (see Section 165.1510(d) of this Part).

Section 165.2020 Small Purchases

- a) Application
- 1) Procurements of \$25,000 or less for supplies or services, other than professional and artistic, may be made using the method of source selection determined by the Procurement Officer to be most appropriate to the circumstances.

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- 2) Procurements of less than \$20,000 for professional and artistic services and that have a non-renewable term of one year or less may be made using the method of source selection determined by the CPO to be the most appropriate to the circumstances.
- b) In determining whether a contract is under the limit, the value of the contract for the full term and all optional renewals, determined in good faith, shall be utilized. The stated value of the supplies or services, plus any optional supplies and services, shall be utilized. Where the term is calculated month-to-month or in a similar fashion, the amount shall be calculated for a 12-month period.
- c) If only a unit price or hourly rate is known, the contract shall be considered small and shall have a not-to-exceed limit applicable to the type of procurement (see subsection (a) of this Section).
- d) If, after signing the contract, the actual cost of completing the contract is determined to exceed the small purchase amount as set forth in subsection (a) of this Section, and the Procurement Officer determines that a supplemental procurement is not economically feasible or practicable because of the immediacy of the SBE's needs or other circumstances, the Procurement Officer shall follow the procedures for sole source or emergency procurement, whichever is applicable, to complete the contract (see Section 165.2025 or Section 165.2030, respectively, of this Part).
- e) Procurement requirements shall not be artificially divided to avoid the Code.
- f) If there is a repetitive need for small procurements of the same type, the Procurement Officer may consider issuing a competitive sealed bid or proposal for procurement of those needs.

Section 165.2025 Sole Economically Feasible Source Procurement

The provisions of this Section apply to procurement from a sole economically feasible source (referred to as sole source) unless the estimated amount of the procurement is within the small purchase limit set forth in Section 165.2020(a) of this Part or unless emergency conditions exist as defined in Section 165.2030 of this Part.

- a) Sole source procurement is permissible when a requirement is available from only a single supplier or when only one supplier is deemed economically feasible. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror authorized to provide that item. The following are examples of circumstances that could necessitate sole source procurement:
 - 1) where the compatibility of equipment, accessories, replacement parts, or service is a paramount consideration;
 - 2) where a sole supplier's items are needed for trial use or testing;
 - 3) where the item is copyrighted or patented and the item or

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service is not available except from the holder of the copyright or patent;

- 4) the procurement of the media for advertising;
- 5) the procurement of art or entertainment services; and
- 6) changes to existing contracts (see subsection (b) of this Section).

b) Changes to an existing contract that are germane and reasonable in scope and cost in relation to the original contract or program, that are necessary or desirable to complete the contract or program, and that can be best accomplished by the contract holder may be procured under this Section when the Procurement Officer determines that the cost of delay or disruption to the contract or program and the cost of a new solicitation clearly indicate that the existing vendor is the sole economically feasible source.

- 1) A change (whether in cost or rate) that does not exceed the applicable small purchase limit as set forth in Section 165.2020(a) of this Part, or that is an emergency as defined in Section 165.2030 of this Part, may be made in accordance with procedures governing those Sections and need not comply with these sole source procedures.
- 2) A change in length of the contract that does not exceed 30 days and other minor, immaterial changes to the scope or administrative provisions of a contract shall not be considered changes subject to these sole source procedures.

c) The determination as to whether a procurement shall be made as a sole source shall be made by the Procurement Officer. Such determination and the basis therefore shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness.

d) The Procurement Officer shall publish in the Bulletin notice of intent to contract with that vendor at least 14 days prior to execution of the contract (see Section 165.1510(f) of this Part).

- 1) If no challenge to this determination is made by a vendor within the 14-day period, the Procurement Officer may execute a contract with that vendor.

2) If a challenge is received, the Procurement Officer shall consider the information and shall commence a competitive procurement if the Procurement Officer determines that more than one economically feasible source may be available and the sole source designation is therefore not appropriate, unless an emergency situation, as defined in Section 165.2030 of this Part, exists.

e) The Procurement Officer shall conduct negotiations, as appropriate, to reach contract terms, including price, and shall maintain a record of each sole source procurement showing:

- 1) the vendor's name;
- 2) the amount and type of the contract;
- 3) what was procured; and

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- 4) the identification number of the contract file.

Section 165.2030 Emergency Procurements

The provisions of this Section apply to every procurement over the small purchase limit set forth in Section 165.2020(a) of this Part that is made under emergency conditions, including quick purchases, and is not a sole source procurement under Section 165.2025 of this Part.

a) Procurements may be made under this Section in the following circumstances. Traditional circumstances include but are not limited to:

- 1) public health or safety, including the health or safety of any particular person, is threatened;
- 2) immediate repairs are needed to SBE property to protect against further loss or damage to SBE property, or to prevent loss or damage to SBE property;
- 3) immediate action is needed to prevent or minimize serious disruption in SBE services;
- 4) action is needed to ensure the integrity of SBE records;
- 5) equipment or services are necessary in the furtherance of covert activities lawfully conducted by the SBE. Any required disclosures shall be made so as not to jeopardize those covert activities;
- 6) immediate action is necessary to avoid lapsing or loss of federal or donated funds; or
- 7) the need for items to protect or further SBE interests is immediate and use of other competitive source selection procedures under the Code and this Part cannot be accomplished without significant risk of causing serious disadvantage to the State.

b) An emergency procurement may be made in those instances when bids or proposals received pursuant to a competitive sealed bid or competitive sealed proposal method are unreasonable or noncompetitive, or the price exceeds available funds, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals, and if emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding.

c) Extending an existing contract for such period of time as needed to conduct a competitive method of source selection is permissible when terminating or allowing the contract to terminate would not be advantageous to the State.

d) Emergency procurements may be made in circumstances necessitating a quick purchase.

- 1) A supplier announces bankruptcy, cessation of business, or loss of franchise, or gives other similar reason such that making a purchase immediately is more advantageous to the State than instituting a competitive procurement under the provisions of this Code for the supplies or services;

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- 2) Items are available on the spot market or at discounted prices for a limited time so that good business judgment mandates a purchase immediately to take advantage of the availability and price;
- 3) Rare items such as books of historical value are available; or
- 4) The procurement is for entertainment.
- e) Emergency procurements shall be limited to the items, quantity and term necessary to meet the emergency need.
- f) Any method of source selection, whether or not identified in this Part, may be used to conduct the procurement in emergency situations. The procedure used shall be selected to assure that the required items are procured in time to meet the emergency. Such competition as is practicable shall be obtained.
- g) A Procurement Officer shall make a written determination stating the basis for an emergency procurement and for the selection of the particular vendor. Such determinations shall be kept in the contract file of the Procurement Officer.
- 1) An affidavit of each emergency procurement shall be filed with the Auditor General within 10 days after the procurement and shall include the following information [30 ILCS 500/20-30(c)]:
- the vendor's name;
 - the amount and type of the contract, provided that if only an estimate of the amount is available immediately, the record shall be supplemented with the final amount once known;
 - a description of what the vendor will do or provide; and
 - the reasons for using the emergency method of source selection.
- 2) Notice of the emergency procurement shall be published in the Bulletin, in accordance with Section 165.1510(e) of this Part.

Section 165.2035 Competitive Selection Procedures for Professional and Artistic Services

The provisions of this Section apply to every procurement of professional and artistic services except those subject to the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535] and except as provided in subsection (d) of this Section.

- a) "Professional and artistic services" means those services provided under contract to a State agency by a person or business, acting as an independent contractor, qualified by education, experience, and technical ability [30 ILCS 500/1-15.60]. Professional and artistic services are further defined as follows:
- "Qualified by education" means the individual who would perform the services must have obtained the level of education specified in the Request for Proposals.
 - "Qualified by experience" means the individual who would perform

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- the services must have the level of general experience specified in the Request for Proposals.
- 3) "Qualified by technical ability" means the individual who would perform the services must demonstrate a high degree of skill or ability in performing services that are the same, similar or closely related in nature to those specified in the Request for Proposals.
- 4) An essential element distinguishing professional and artistic services from other services is confidence, trust, and belief in not only the ability, but the talent, of the individual performing the service. These services are primarily for intellectual or creative skills. Contracts for services primarily involving manual skills or labor are not professional and artistic services contracts. (See Illinois Attorney General Opinion S-256, January 20, 1971.)
- 5) If the professional or artistic contract is with a firm or other business entity, the individuals whose education, experience and technical ability provided the basis on which the firm or other business entity was selected must meet the qualifications.
- 6) When the SBE requires services that meet the requirements of this subsection (a), the competitive selection procedures described in this Section shall be followed. Services that do not meet the requirements of this Section shall be procured in accordance with other methods of source selection authorized by the Code and this Part.
- b) The categories of services enumerated below shall be considered and procured as professional and artistic services. With regard to other services, the Procurement Officer may determine whether the factors identified in subsection (a) of this Section, when applied to particular services to be procured, require such services to be procured as professional and artistic under these competitive selection procedures, or as services that are subject to one of the other methods of source selection authorized by the Code and this Part. The following categories are examples of disciplines that would always be professional and artistic services:
- law;
 - accounting;
 - medicine;
 - dentistry; and
 - clinical psychology.
- c) Architect, engineering and land surveying services shall be procured pursuant to the procedures of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535]. Such procurements are not subject to the procedures for other professional services established in the Code or this Part.
- d) Except for sole source or emergency procurement authorized under Section 20-25 or Section 20-30 of the Code, respectively, these competitive selection procedures shall be used for all procurements of

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professional and artistic services of \$20,000 or more. Services of less than \$20,000 and for a nonrenewable term of one year or less, as determined by the CPO, may be procured in accordance with Section 165.2020 of this Part.

- e) The Procurement Officer may use the list of prequalified professional and artistic vendors maintained by DCMS. Vendors may amend statements of qualifications at any time by filing a new statement. *Prequalification shall not be used to bar or prevent any qualified business or person from bidding or responding to invitations for bid or proposal [30 ILCS 500/35-15(d)].*

- f) Notice of the need for professional and artistic services shall be made by the Procurement Officer in the form of a Request for Proposals.

- 1) Notice shall be given as provided in Section 165.2010(d) of this Part.

- 2) Notice shall also be distributed to persons interested in performing the services required by the proposed contract.

- g) The Request for Proposals shall be in the form specified by the Procurement Officer and contain at least the following information:

- 1) the type of services required;
- 2) a description of the work involved;
- 3) an estimate of when and for how long the services will be required;

- 4) the type of contract to be used;

- 5) a date by which proposals for the performance of the services shall be submitted;

- 6) a statement of the minimum information that the proposal shall contain, which may, by way of example, include:

- A) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;

- B) if deemed relevant by the Procurement Officer, the age of the offeror's business and average number of employees over a previous period of time, as specified in the Request for Proposals;

- C) the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;

- D) a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the Request for Proposals;

- E) a plan, giving as much detail as is practical, explaining how the services will be performed;

- 7) price (to be submitted in a separate envelope in the proposal package and not mentioned elsewhere in the proposal package); and

- 8) the factors to be used in the evaluation and selection process and their relative importance.

- h) Proposals shall be evaluated only on the basis of evaluation factors

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stated in the Request for Proposals. Price shall not be evaluated until all proposals have been ranked and the most qualified vendor identified. The relative importance of the evaluation factors will vary according to the type of services being procured. The minimum factors are:

- 1) the plan for performing the required services;
- 2) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;
- 3) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
- 4) a record of past performance of similar work.

- i) A bidders' conference, if appropriate, shall be conducted in accordance with Section 165.2010(e) of this Part. Such a conference may be held anytime prior to the date established for submission of proposals.

- j) Proposals shall be submitted to and opened by the Procurement Officer in accordance with instructions given.

- 1) Proposals and modifications shall be opened publicly at the time, date and place designated in the Request for Proposals.

- A) Opening shall be witnessed by an SBE employee and by any other person present. A record shall be prepared that shall include the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply or service item offered. The record of proposals shall be open to public inspection after award of the contract.

- B) Proposals and modifications shall be opened in a manner designed to avoid disclosing contents to competitors. Only SBE personnel and contractual agents may review the proposals prior to award.

- 2) Proposals of offerors who are not awarded the contract shall not be open to public inspection.

- k) Discussions

- 1) The Procurement Officer may conduct discussions with any offeror to:

- A) determine in greater detail such offeror's qualifications; and

- B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach. The Procurement Officer may allow changes to the proposal based on those discussions.

- 2) Discussions shall not disclose any information derived from proposals submitted by other offerors, and the SBE shall not

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disclose any information contained in any proposals until after award of the proposed contract has been made. The proposal of the offeror awarded the contract shall be open to public inspection except as otherwise provided in the contract.

1) After conclusion of validation of qualifications, evaluation, and discussion, the Procurement Officer shall rank the acceptable offerors in the order of their respective qualifications.

m) Pricing submitted for all timely submitted proposals shall be opened and ranked.

1) If the low price is submitted by the most qualified vendor, the Procurement Officer may award to that vendor.

2) If the price of the most qualified vendor is not low and if it does not exceed \$25,000, the CPO may award to that vendor.

3) If the price of the best qualified vendor exceeds \$25,000, the CPO shall state why a vendor other than the low-priced vendor was selected and that determination shall be published in the Bulletin (see 30 ILCS 500/35-30(f)).

n) The Procurement Officer shall attempt to negotiate a contract with the best qualified offeror for the required services at fair and reasonable compensation. The Procurement Officer may, in the interest of efficiency, negotiate with other vendors, while negotiating with the best qualified vendor.

1) At a minimum, contract negotiations shall be directed toward:

A) making certain that the offeror has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;

B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and

C) agreeing upon compensation that is fair and reasonable, taking into account the estimated value of the required services and the scope, complexity, and nature of such services.

2) If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror, unless the procurement is canceled. Compensation shall be determined in writing to be fair and reasonable. Fair and reasonable compensation shall be determined by the Procurement Officer based on the circumstances of the particular procurement, including but not limited to:

A) the nature of the services needed,

B) qualifications of the offerors,

C) consideration of the range of prices received in the course of the procurement, and

D) the SBE's identified budget.

3) If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefor shall be placed in the file.

The Procurement Officer shall advise such offeror of the termination of negotiations.

A) Upon failure to negotiate a contract with the best qualified offeror, the Procurement Officer may enter into negotiations with the next most qualified offeror.

B) Nothing in this Section shall prohibit the Procurement Officer from making a selection that represents the best value, qualifications, price and other relevant factors established in the Request for Proposals being considered. The Procurement Officer may, in considering best value, determine the proposal from a fully qualified vendor that submitted the lowest price to be the best value without further evaluation.

o) The Procurement Officer may enter into negotiations with the most qualified vendor or vendors when the SBE has a need that requires multiple vendors under contract.

p) The Procurement Officer procuring professional and artistic services, including those under an exception described in subsection (d), shall provide the information necessary for publication in the Bulletin.

q) Written notice of award shall be public information and made a part of the contract file. Publication shall be in the next available issue of the Bulletin (see 30 ILCS 500/35-30(e)).

r) The SPO shall prepare a synopsis of the contract and shall rate the vendor's performance in a contract review document that shall be forwarded to the CPO. A copy of the completed document shall be maintained in the files of the SPO.

Section 165.2036 Other Methods of Source Selection

a) A split award is an award of a definite quantity requirement that may be split between bidders or offerors. Each portion shall be for a definite quantity and the sum of the portions shall be the total definite quantity required. A split award may be used only when award to more than one bidder or offeror for different amounts of the same item is necessary to obtain the total quantity or the required delivery.

b) A multiple award is an award of an indefinite quantity contract to more than one bidder or offeror when the SBE is obligated to order all of its actual requirements from those vendors.

1) A multiple award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Awards shall not be made for the purpose of simply dividing the business or to select products or suppliers to allow for user preference unrelated to utility or economy. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of the SBE.

2) The SBE shall reserve the right to take bids separately if a particular quantity requirement arises that exceeds its normal

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requirement or an amount specified in the contract.

- 3) If a multiple award is anticipated, the solicitation shall state this fact as well as the criteria for award.
- 4) In a multiple award situation, one vendor may be designated as the primary recipient of orders. The other awardees may receive orders in the event the primary vendor is unable to deliver or for other reasons as determined by the Procurement Officer.
- c) A term and condition contract contains agreed contractual terms and conditions established for the convenience of the parties to be used in conjunction with a subsequent procurement and processed in accordance with the requirements of the Code and this Part. A term and condition contract is not a procurement.
 - 1) Orders may be placed against term and condition contracts without use of any prescribed method of source selection for convenience of processing sole source, emergency, or small procurements.
 - 2) Agencies with reasonably defined repetitive small needs that, over the course of a fiscal year, are likely to exceed the small purchase amount set forth in Section 20-20 of the Code and Section 165.2020(a) of this Part may consider a competitive method of source selection to contract for those repetitive needs.
- d) Requirements of the Code and this Part may be modified or adapted to meet federal requirements necessary to receive or maintain federal aid funds, grants or loans or to stay in compliance with federal requirements.
- e) Purchases may be made at auction in accordance with the procedural requirements applicable to the particular auction. Notice and competition are not required and the amount payable shall be the amount bid and accepted plus any required buyer's premium.
- f) With the approval of the CPO, when the SBE receives a donation that provides the majority of the funding, the SBE may follow any procurement or contracting requirements established as a condition of the donation, but shall follow the Code and this Part to the extent practicable.

Section 165.2037 Tie Bids and Proposals

Tie bids or proposals are those from responsive and responsible vendors that are identical in price or evaluation and represent the low price. Tie bids or proposals shall be treated as follows:

- a) If the tied vendors include an Illinois resident vendor, the Illinois resident vendor shall be given the award. In all other situations, including if two or more Illinois resident bidders are tied, the decision shall be made in accordance with this Section. "Illinois resident vendor" has the meaning given in Section 165.4510(a) of this Part.
- b) If there is a significant difference in responsibility (including ability to provide the service or deliver in the quantity and at the

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- time required), the award shall be made to the vendor who is deemed to be the most responsible. A vendor who has had experience in contracting with the SBE shall be given additional consideration in determining responsibility if the Procurement Officer determines that dealing with a vendor that has knowledge of SBE requirements, contracts, job sites, payment practices and such other factors and with which there has been favorable past experience increases the likelihood of successful performance.
- c) If there is no significant difference in responsibility, but there is a difference in the quality of the supplies or services offered, the vendor offering the best quality shall be accepted.
- d) If there is no significant difference in responsibility and no difference in quality of the supplies or services offered, the vendor offering the earliest delivery time shall be accepted in any case in which the solicitation specified that the needs of the SBE require delivery as early as possible.
- e) If the bids or proposals are equal in every respect, the award shall be made by lot unless the Procurement Officer determines that splitting the award among two or more of the tied bidders is in the best interest of the State. Awards may be split if all affected bidders agree, if splitting is feasible given the type of supplies or services requested, if overall pricing would not increase, if delivery would be better ensured, or if necessary or desirable to promote future competition.
- f) The SPO shall provide a report to the CPO on a quarterly basis of all procurements on which tie bids or proposals were received. The report shall provide the following information:
 - 1) identification of the solicitation by date;
 - 2) a description of what was procured; and
 - 3) a listing of all the bidders and the prices submitted.

Section 165.2038 Mistakes

Corrections to bids, proposals or other procurement processes are allowed, but only to the extent not contrary to the best interest of the State or the fair treatment of other bidders.

- a) Before the time and date set for opening, a vendor may correct mistakes discovered by withdrawing or correcting as provided in this Section.
- b) When the Procurement Officer knows or has reason to conclude that a mistake has been made, such officer shall request the vendor to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than what the others submitted. If the vendor alleges a mistake, the bid or proposal may be corrected or withdrawn if the conditions set forth in this Section, as applicable, are met.
- c) Mistakes in bids discovered after opening but before award shall be

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addressed according to the following procedures.

- 1) A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the Invitation for Bids, the correction or waiver of which would not be prejudicial to the SBE (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The Procurement Officer shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the SBE. Examples of minor informalities as to form include the failure of a bidder to:
 - A) return the number of signed bids required by the Invitation for Bids; or
 - B) acknowledge receipt of an amendment to the Invitation for Bids, but only if:
 - i) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or
 - ii) the amendment involved had a negligible effect on price, quantity, quality, or delivery.

- 2) If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

- 3) With mistakes where the intended correct bid is not evident, a bidder may be permitted to withdraw a low bid if:
 - A) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - B) the bidder submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

- d) Mistakes in proposals discovered after receipt, but before award shall be addressed according to the following procedures.
 - 1) Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake prior to the date set for conclusion of discussions or for receipt of best and final offers.

- 2) Minor informalities, unless otherwise corrected by an offeror as provided in this Section, shall be treated as they are under subsection (c) of this Section.

- 3) If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:
 - A) the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or

- B) the mistake is not clearly evident on the face of the proposal, but the offeror submits adequate proof that

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clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.

- 4) If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:
 - A) the mistake is clearly evident on the face of the proposal and the intended correct offer is not;
 - B) the offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or
 - C) the offeror submits adequate proof that clearly and convincingly demonstrates the intended correct offer, but to allow corrections would be contrary to the fair and equal treatment of other offerors.

- e) Mistakes shall not be corrected after award of the contract except where the Procurement Officer finds it would be unconscionable (e.g., if the mistake resulted in a windfall to the SBE) not to allow the mistake to be corrected.
- f) When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared showing that relief was granted or denied in accordance with this Part. The Procurement Officer shall prepare the determination.

Section 165.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

The provisions of this Section shall govern the cancellation of any solicitations whether issued by the State under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.

- a) Any solicitation may be canceled when the Procurement Officer believes cancellation to be in the State's best interest. Nothing shall compel the award of a contract.

- b) As used in this Section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

- 1) Prior to opening, a solicitation may be canceled in whole or in part when the Procurement Officer determines in writing that such action is in the State's best interest for reasons including, but not limited to:
 - A) the SBE no longer requires the supplies or services;
 - B) the SBE no longer can reasonably expect to fund the procurement; or
 - C) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

- 2) When a solicitation is canceled prior to opening, notice of cancellation shall be sent to solicited vendors. The notice of

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cancellation shall:

- A) identify the solicitation;
 - B) briefly explain the reason for cancellation; and
 - C) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any procurements of similar supplies or services.
- c) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the Procurement Officer determines in writing that such action is in the State's best interest.

- 1) Such reasons for rejection in whole or in part may include, but are not limited to:

- A) the supplies or services being procured are no longer required;
- B) ambiguous or otherwise inadequate specifications were part of the solicitation;
- C) the solicitation did not provide for consideration of all factors of significance to the SBE;
- D) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- E) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
- F) there is reason to question whether the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

- 2) When the solicitation is canceled or when all bids or proposals are rejected, all vendors who submitted bids or proposals shall be sent a notice upon request informing them of the reasons for the cancellation or rejection.

- d) The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

- e) The following procedures apply to rejections of individual bids or proposals in whole or in part.

- 1) Each solicitation shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the State as provided in this subsection (e).

- 2) Reasons for rejecting a bid or proposal may include, but are not limited to:

- A) the business that submitted the bid or proposal is not responsible as determined under Section 165.2046 of this Part;
- B) the bid or proposal is not responsive (that is, it does not conform in all material respects to the solicitation);
- C) the proposal ultimately (that is, after any opportunity has passed for altering or clarifying the proposal) fails to meet the announced requirements of the SBE in some material respect;

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- D) the supply or service item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation for Bids or Request for Proposals; or
- E) the proposed price is clearly unreasonable.

- 3) Upon request, unsuccessful bidders or offerors shall be advised of the reasons for rejection.

SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

Section 165.2043 Suppliers

The SBE may contract with any qualified source of supply, but should give preference to directed sources and should consider the following special sources.

- a) Directed sources of State-produced supplies or services are:

- 1) Correctional Industries. The CPO, after consulting with the Department of Corrections, shall determine which supplies produced or services performed, if any, by Correctional Industries shall be purchased by SBE. The CPO shall determine whether such supplies or services meet the SBE's requirements and whether the price represents a fair market value for such supplies and services.

- 2) Central Services. Supplies and services available from the program operations of DCMS shall be utilized unless the CPO authorizes procurement from other sources.

- b) Special sources of supplies or services include the following:

- 1) Property available from the State and Federal Surplus Warehouses, which are under the jurisdiction of the DCMS, should be considered by SBE prior to any equipment procurement. The State Property Control Act [30 ILCS 605/7a] requires that surplus furniture be considered before any purchase of new furniture valued at \$500 or more per piece.

- 2) Various supplies and services are available from qualified workshops for persons with disabilities and procurement from these workshops is encouraged. Notice and competition are not required. (See 30 ILCS 500/45-35.)

- 3) Various supplies and services are available from other State agencies and other governmental units. These may be procured without notice and competition.

Section 165.2044 Vendor Lists

The SBE may refer to vendor lists prepared and maintained by DCMS in accordance with Section 20-45 of the Code.

Section 165.2046 Responsibility

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Contracts are to be made only with responsible vendors unless no responsible vendor is available to meet the SBE's needs. If there is doubt about responsibility, and if a bond or other security would adequately protect the State's interests, then that vendor may be awarded a contract upon receipt of the bond or other security.

a) Standards of Responsibility

- 1) Factors to be considered in determining whether the standard of responsibility has been met may include, but need not be limited to, whether a prospective vendor:
 - A) has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements (the Procurement Officer may designate a level of financial resource below which the vendor shall be deemed "not responsible");
 - B) is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;
 - C) has a satisfactory record of performance. Vendors who are or have been deficient in current or recent contract performance in dealing with the State or other customers may be deemed "not responsible" unless the deficiency is shown to have been beyond the reasonable control of the vendor;
 - D) has a satisfactory record of integrity and business ethics. Vendors who are under investigation or indictment for criminal or civil actions that bear on the particular procurement or that create a reasonable inference or appearance of a lack of integrity on the part of the vendor may be declared not responsible for the particular procurement;
 - E) is qualified legally to contract with the State;
 - F) has supplied all necessary information in connection with the inquiry concerning responsibility;
 - G) has a current Public Contracts' number from the Illinois Department of Human Rights, pursuant to 44 Ill. Adm. Code 750.210, if required. Proof of application prior to opening of bids or proposals shall be sufficient for an initial determination;
 - H) pays prevailing wages, if required by law; and
 - I) is current in payment of all State of Illinois taxes, including the unemployment insurance tax.

- 2) The prospective vendor shall supply information requested by the Procurement Officer concerning the responsibility of such vendor. The State may supplement this information from other sources and may require additional documentation at any time. If such vendor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any

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available information, or may find the prospective vendor not responsible.

- b) The prospective vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:
 - 1) evidence that such vendor possesses such necessary items;
 - 2) acceptable plans to subcontract for such necessary items; or
 - 3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

- c) Before awarding a contract, the Procurement Officer shall be satisfied that the prospective vendor is responsible. Responsibility can be proven until the time of contract execution unless the solicitation or other law requires that the vendor submit information necessary to determine responsibility by a stated date or time.

- d) If a vendor who otherwise would have been awarded a contract is found not responsible, a written determination of irresponsibility setting forth the basis of the finding shall be prepared by the Procurement Officer. The final determination shall be made part of the procurement file.

- e) Vendors not having a history of performance may be considered responsible if no other disqualifying factors exist. A bond or other security may be required of such vendors.

- f) Vendors who are newly formed business concerns having substantially the same owners, officers, directors, or beneficiaries as a previously existing vendor that has been determined not responsible shall also be determined not to be responsible unless the new organization can prove it was not set up for the purpose of avoiding an earlier determination of irresponsibility.

SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

Section 165.2047 Security Requirements

- a) The Procurement Officer may require that a vendor furnish bid, proposal, or performance security on contracts. Whenever security is required, except as provided herein, the procurement document shall clearly indicate the type and amount of security.
- b) Security, unless otherwise specified, may be in the form of cashier's check, certified check, money order, irrevocable letter of credit or bond. Any bond shall be issued by a surety company authorized to do business in the State of Illinois.
- c) Unless the amount is set by law, the Procurement Officer shall determine the amount, in dollars or percentage of contract price, that will adequately protect the State's interests. That amount will vary depending on the type of procurement and the risks and potential losses associated with delay or failure to complete the project, and for other such reasons.
- d) A vendor may be required to furnish up to 100 percent performance

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security at any time during contract performance and at its cost, if it appears that delivery or production schedules cannot be met, quality is poor, responsibility is questioned, and for other similar reasons.

e) Permissive/Mandatory Security

1) Bid or proposal security is permissive on any contract but is not appropriate on emergency or sole source procurements.

2) Performance security is permissive on any contract and is recommended on contracts calling for advance payment.

f) A vendor may submit a single or continuous security each year that shall be applicable on all contracts of the SBE. When such security has been obligated in an amount equal to the sum of accumulated security requirements, additional security shall be submitted.

g) Bid or proposal security shall be returned to unsuccessful vendors as soon after award as possible. The bid or proposal security of the successful vendor shall be returned after the contracts have been signed and performance security, if any, submitted. Performance security shall be returned upon full performance.

SUBPART H: SPECIFICATIONS

Section 165.2050 Specifications

a) The Procurement Officer may write specifications for procurements for the SBE or may use specifications or qualified products lists established by DCMS.

1) If no such specification exists, the Procurement Officer is authorized to prepare specifications for use in such purchases. In an emergency under Section 20-30 of the Code and Section 165.2030 of this Part, any necessary specification may be utilized without regard to the provisions of this Subpart.

2) If a specification for general or common use or a qualified products list exists for an item to be procured under Section 20-20 of the Code and Section 165.2020 of this Part, it shall be used except as otherwise authorized by the CPO.

3) When a written determination is made by the CPO or the SPO authorized to prepare such specifications that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the State, a contract to prepare specifications for SBE use in procurement of supplies or services may be entered into provided that the CPO or the SPO retains the authority to finally approve the specifications.

b) All procurements shall be based on specifications that accurately reflect the SBE's needs. Specifications shall clearly and precisely describe the salient technical or performance requirements.

1) If a specification for common or general use item has been developed or a qualified products list has been developed in accordance with this Section for a particular supply or service,

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it shall be used unless the CPO authorizes use of another specification. Specifications shall not include restrictions that do not significantly affect the technical requirements, performance requirements, or other legitimate SBE needs. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply or service, or procurement from a sole source, unless no other manner of description will suffice.

3) Any specifications or standards adopted by a business, industry, not-for-profit organization or governmental unit may be adopted by reference.

4) A specification may provide alternate descriptions where two or more design, functional, or performance criteria will satisfactorily meet the SBE's requirements.

c) Brand Name or Equal Specification

1) Brand name or equal specifications may be used when a Procurement Officer determines in writing that:

- A) no specification for a common or general use specification or qualified products list is available;
- B) time does not permit the preparation of another form of specification, not including a brand name specification;
- C) the nature of the product or the nature of the SBE's requirement makes use of a brand name or equal specification suitable for the procurement; or
- D) use of a brand name or equal specification is in the State's best interest.

2) Brand name or equal specifications shall seek to designate more than one brand as "or equal," and shall further state that substantially equivalent products to those designated will be considered for award.

3) Unless the Procurement Officer determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics that are required.

4) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. "Or equal" submissions shall not be rejected because of minor differences in design, construction or features that do not affect the suitability of the product for its intended use. Burden of proof that the product is equal is on the bidder.

d) A brand-name-only specification may be used only when the Procurement Officer makes a written determination that only the identified brand

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name item or items will satisfy the SBE's needs.

- 1) Brand name alone may be specified in order to fill medical prescription needs, to stock State retail-type operations, to ensure compatibility in existing systems, to preserve warranty, or to ensure maintenance. The SBE may, pursuant to an authorized competitive procedure, select a particular vendor to provide supplies or services for a specified period of time, and for that period the supplier of additional, related and updated supplies and services may be limited to the selected vendor or the brand initially selected.
- 2) The Procurement Officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made pursuant to Section 165.2025 of this Part.
- 3) Brand-name-only specifications may be used when procuring items under the small and emergency procurement provisions (see Section 165.2020 and Section 165.2030, respectively, of this Part).
- e) The supply or service may be rejected if it has not been offered to other governmental or commercial accounts for at least one year. Specifications may require that the supply or service have been used in business or industry for a specified period of time to be considered.

SUBPART I: CONTRACT TYPE

Section 165.2055 Types of Contracts

This Section describes the types of contracts and the limitations as to when they should be utilized by the SBE in its procurements. Types of contracts not mentioned in this Section may also be utilized.

- a) The cost-plus-a-percentage-of-cost contract is prohibited by Section 20-55 of the Code. This type of contracting shall not be used alone or in conjunction with an authorized type of contract. A cost-plus-percentage-of-cost contract is one in which the vendor selects the supply or service on which the vendor's percentage is applied.
 - 1) A percentage mark-up from an agreed price list is not a cost-plus-a-percentage-of-cost contract.
 - 2) A percentage mark-up from the price of a supply or service selected by the SBE or another vendor under contract to the SBE is not a cost-plus-a-percentage-of-cost contract.
- b) Types of Fixed-Price Contracts
 - 1) A firm fixed-priced contract provides a price that is not subject to adjustment because of variations in the vendor's cost of performing the work specified in the contract.
 - 2) A fixed-price contract with price adjustment provides for

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variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work.

- A) The formula or other basis by which the adjustment in the vendor's price can be made shall be specified in the solicitation and the resulting contract. Adjustment allowed may be upward or downward only, or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

- i) changes in the vendor's labor agreement rates as applied to an industry or area (such as are frequently found in contracts for the purchase of coal);
 - ii) changes due to rapid and substantial price fluctuations that can be related to an accepted index (such as contracts for gasoline, heating oils, and dental gold alloy); and
 - iii) in requirement contracts, where a vendor is selected to provide all of the SBE's needs for the items specified in the contract, when a general price change applicable to all customers occurs, or when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).
- B) If the contract permits unilateral action by the vendor to bring about the condition under which a price increase may occur, the SBE shall have the right to reject the price increase and terminate without cost the future performance of the contract.

- c) A cost-reimbursement type contract may be used only when the Procurement Officer determines in writing that such a contract is likely to be less costly to the State than any other type or that it is impracticable to obtain the item required except under that type of contract [30 ILCS 500/20-55]. Reimbursement of travel expenses in accordance with applicable travel control board regulations is authorized without further determinations.

- 1) A cost contract provides that the vendor shall be reimbursed for allowable costs incurred in performing the contract, but shall not receive a fee.
- 2) A cost-plus-fixed-fee contract is a cost-reimbursement type contract that provides for payment to the vendor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary if the actual cost of contract performance is greater or less than the initial estimated cost established for such work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the

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contract is modified to provide for an increase or decrease in the scope of work specified in the contract.

- 3) A cost-incentive type of contract provides for the reimbursement to the vendor of allowable costs incurred up to the ceiling amount and establishes a formula whereby the vendor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract will vary inversely with the actual, allowable costs of performance and, consequently, is dependent on how effectively the vendor controls cost in the performance of the contract).

A) In a fixed-price cost-incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit that will be paid if the actual cost of performance equals the target cost), a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable costs as provided in the contract. The final contract price is then established in accordance with the formula using the actual cost of performance. The final contract price shall not exceed the ceiling price. The vendor is obligated to complete performance of the contract, and, if actual costs exceed the ceiling price, the vendor suffers a loss.

B) In a cost-reimbursement contract with cost-incentive fee, the parties establish at the outset a target cost; a target fee; a formula for increase or decrease of the fee depending on whether the actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling that represents the maximum amount that the SBE is obligated to reimburse the vendor. The vendor continues performance until the work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever occurs first. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed as provided in the contract are applied to the formula to establish the incentive fee payable to the vendor.

- d) A performance incentive contract is one in which the parties establish at the outset a pricing basis for the contract, performance goals, and a formula that varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the vendor to a bonus, while late completion may entitle the SBE to a price decrease.

e) Time and materials contracts provide an agreed basis for payment for materials supplied and labor performed. Labor hour contracts provide only for the payment of labor performed. Such contracts shall, to the

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extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior SBE approval.

- f) A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

g) An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally, an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract may provide a minimum quantity the SBE is obligated to order and may also provide for a maximum quantity provision that limits the SBE's obligation to order.

h) A requirements contract is an indefinite quantity contract for supplies or services that specifically obligates the SBE to order all the actual requirements of the SBE during a specified period of time.

i) A lease is a contract for the use of supplies or real property under which title will not pass to the State at any time, except pursuant to an option to purchase.

j) Contracts may provide for payment to the vendor of a percentage of the amount the vendor recovers or collects on behalf of the SBE. The percentage may be fixed or may vary depending on amount of recovery or other factors, and the percentage may be paired with a fixed price or cost reimbursement method.

k) Option Provisions

1) When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. These options may be exercised without taking other procurement action when the option is established for exercise at the SBE's option.

2) A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals, the leased supply or facility is the only supply or facility that can meet the SBE's requirements, the purchase option price is less than the small purchase limit or emergency conditions exist.

l) Notwithstanding any provision in any contract, supplies or services available from the State's own programs, such as Correctional Industries, may be ordered without violating any contract.

m) Notwithstanding any provision in any contract, the SBE reserves the right to take bids separately if a particular quantity requirement arises that exceeds the SBE's normal needs or ordering requirements.

n) The CPO may authorize an Invitation for Bids, Request for Proposals or sole source negotiation for an energy conservation measure whereby the State would make payment based on utility cost savings. Such a contract shall require a clearly defined baseline of energy usage and method of measuring cost savings, taking into account at least differing weather conditions, changes in facility, usage and cost of

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SUBPART J: DURATION OF CONTRACTS

Section 165.2060 Duration of Contracts - General

energy.

- a) General
 - 1) A multi-term contract for a term up to 10 years is authorized when determined by the Procurement Officer to be in the best interest of the State (see 30 ILCS 500/20-60(a)).
 - 2) A software license may have a term longer than 10 years, including for a perpetual term, provided the payment term is limited to no more than 10 years.
- b) The contractual obligation of both parties in each fiscal period succeeding the first is subject to appropriation and availability of funds. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the remainder of such contract shall be canceled without penalty to, or further payment being required by, the SBE (see 30 ILCS 500/20-60(b)). This provision applies to only those contracts that are funded in whole or in part by funds appropriated by the Illinois General Assembly or other governmental entity.
- c) A multi-term contract may be used when:
 - 1) special production of definite quantities or the furnishing of long-term services is required to meet SBE needs; or
 - 2) it will serve the best interests of the State by encouraging effective competition or otherwise promoting economies in SBE's procurement. The following factors are among those relevant to such a determination:
 - A) firms that are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;
 - B) lower production costs because of larger quantity of service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;
 - C) stabilization of the vendor's work force over a longer period of time may promote economy and consistent quality; or
 - D) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.
- d) The multi-term contract solicitation shall state:
 - 1) the proposed term;
 - 2) the amount of supplies or services required for the proposed contract period;
 - 3) the type of pricing requested (e.g., firm for term);

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- 4) how award will be determined.
- e) When the original procurement specifically called for an initial term plus renewals, the renewals may be exercised without further procurement activity, provided the initial term and the exercised renewals shall not exceed 10 years, the terms and conditions do not change except as provided in the contract (such as price escalations tied to an index), and the option is reserved solely to the SBE or is by mutual agreement. A renewal option that requires modification to a material term or condition of the contract shall be treated as a new contract and shall be subject to competitive procurement procedures established by the Code and this Part.
 - 1) When the original procurement was silent as to renewals, the renewal shall be procured using one of the methods of source selection authorized by the Code and this Part. This renewal shall start a new term not to exceed 10 years.
 - 2) Where a renewal will result in the total contract term, counting the initial term and any previous renewals, that exceeds 10 years, the renewal shall be procured using one of the methods of source selection authorized by the Code and this Part. This renewal shall start a new term that shall not exceed 10 years.

SUBPART K: CONTRACT MATTERS

Section 165.2560 Prevailing Wage

- a) For the following classifications and if competition exists, no bidder shall be awarded a contract unless its employees are paid wages and benefits and are working under conditions prevalent in the location where the work is to be performed.
 - 1) Public works.
 - 2) Printing.
 - 3) All services, such as janitorial services, window washing and security guard services, having a monthly contract price of at least \$200 or more or a yearly price of \$2,000 or more (see 30 ILCS 500/25-60(a)).
- b) Prevailing wage and conditions prevalent means the hourly wage rate, overtime, holiday pay, pension, welfare, premium differential, vacation pay and other benefits received by employees and the environmental conditions under which they work.
- c) Prevailing wages, benefits and working conditions will be determined by the Director of the Illinois Department of Labor (see 30 ILCS 500/25-60(a)(1)).
 - 1) Prevailing wage rates, benefits and working conditions shall be those in effect on the first date of the contract, provided that, if the rate changes during the contract term and the amount of change is known before execution of the contract, then the contract rate will vary in like amount.
 - 2) If the change in the collective bargaining agreement cannot be

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determined in advance, the contract shall be changed by the amount of the change in wage rate and all components of price that are dependent on the usage rate, such as payroll taxes, worker's compensation insurance, vacation, sick days, and pension, provided that profit shall not increase due to prevailing wage increases. The SBE shall have the option to cancel the contract if the new price is unacceptable.

- 3) If the initial prevailing wage, etc., cannot be determined prior to execution, contracts may be entered into and shall remain valid for the stated term.

- d) If a collective bargaining agreement is in effect governing the type of printing, janitorial, window washing or security guard service sought, that agreement shall define minimum wages, benefits and conditions that shall be paid in order for a bidder to be considered responsible.

- e) For public works, location means the county where the physical work upon public works is performed, except that if there is not available in the county a sufficient number of competent skilled laborers, workers and mechanics to construct the public works efficiently and properly, "locality" includes any other county nearest the one in which the work or construction is to be performed and from which such persons may be obtained in sufficient numbers to perform the work.

- f) For printing contracts, location means one of the following areas:

- 1) Cook County;
- 2) Boone, Bureau, Carroll, Champaign, DeKalb, DeWitt, DuPage, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Davies, Kane, Kankakee, Kendall, Knox, Lake, LaSalle, Lee, Livingston, Logan, Marshall, Mason, McDonough, McHenry, McLean, Mercer, Ogle, Peoria, Piatt, Putnam, Rock Island, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Will, Winnebago, and Woodford counties;
- 3) Adams, Alexander, Bond, Brown, Calhoun, Cass, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macon, Macoupin, Madison, Marion, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Perry, Pike, Pope, Pulaski, Randolph, Richland, Saline, Sangamon, Scott, Shelby, St. Clair, Union, Wabash, Washington, Wayne, White, and Williamson counties.

- 4) Where the printing is performed in a plant outside the jurisdiction of this State, it shall be deemed produced in the Illinois locality in which delivery of the printing ordered is required to be made. Where such printing is required to be delivered to more than one Illinois locality, such printing shall be deemed produced in the Illinois locality to which the largest dollar volume of printing under the contract is to be delivered.

- g) For janitorial services, window washing and security guard services, location means the county in which the work is to be performed.

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Section 165.2570 Equal Employment Opportunity; Affirmative Action

- a) Every party to a public contract and every eligible bidder shall:

- 1) Refrain from unlawful discrimination and discrimination based on citizenship status in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
- 2) Comply with the procedures and requirements of the regulations of the Department of Human Right (DHR) concerning equal employment opportunities and affirmative action;
- 3) Provide such information, with respect to its employees and applicants for employment, and assistance as DHR may reasonably request;
- 4) Have written sexual harassment policies that shall include, at a minimum, the following information:

- A) the illegality of sexual harassment;
 - B) the definition of sexual harassment under State law;
 - C) a description of sexual harassment, utilizing examples;
 - D) the vendor's internal complaint process, including penalties;
 - E) the legal recourse, investigative and complaint process available through DHR and the Human Rights Commission;
 - F) directions on how to contact DHR and the Commission; and
 - G) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act (IHRA) [775 ILCS 5]. A copy of the policies shall be provided to the DHR upon request.
- b) Section 7-105A of the IHRA authorizes the DHR to promulgate policies and rules to implement the provisions of the IHRA applicable to eligible bidders and public contractors. DHR has promulgated rules that establish public contractor and eligible bidder duties, obligations, and reporting requirements (see 44 Ill. Adm. Code 750). Those rules require that certain employers register with DHR in order to be eligible for the award of certain public contracts (see 44 Ill. Adm. Code 750.Appendix A).

SUBPART L: CONTRACT PRICING

Section 165.2800 All Costs Included

The Invitation for Bids or Request for Proposals and any resulting contract shall define whether prices cover transportation, transit insurance, delivery, installation, taxes, and any other costs.

SUBPART M: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

Section 165.4005 Real Property Leases and Capital Improvement Leases

The Procurement Officer may procure leases for real property or capital

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improvements in accordance with Article 40 of the Code, this Part, and 44 Ill. Adm. Code 5000.

SUBPART N: PREFERENCES

Section 165.4505 Procurement Preferences

The procurement preferences identified in Article 45 of the Code shall be considered in developing procurement documents, conducting evaluations and drafting contracts. When any such preference is utilized, the Invitation for Bids, Request for Proposals, or other procurement request shall identify the preference and the conditions associated with such use. Subsequent Sections of this Subpart N identify conditions for the use of certain of the statutory preferences.

Section 165.4510 Resident Bidder Preference

- a) "Illinois resident vendor" is a person authorized to transact business in this State and having a bona fide establishment for transacting business within this State where it was actually transacting business on the date when any competitive solicitation for a public contract was first advertised or announced. A resident bidder includes a foreign corporation duly authorized to transact business in this State that has a bona fide establishment for transacting business within this State where it was actually transacting business on the date when any competitive solicitation for a public contract was first advertised or announced [30 ILCS 500/45-10(b)].
- b) In breaking a tie, an Illinois resident vendor shall be given the award.
- c) This Section does not apply to any contract for any project in which federal funds are available for expenditure when its provisions may be in conflict with federal law or federal regulation.

Section 165.4530 Correctional Industries

- a) The Procurement Officer shall consult a listing maintained by DCMS of supplies or services available from the Department of Corrections.
- b) The SBE may procure from the Department of Corrections without seeking competition or giving public notice.

Section 165.4535 Sheltered Workshops for Persons with Disabilities

- a) The Procurement Officer may determine to contract with a sheltered workshop on the list maintained by DCMS and may do so without notice or competition.
- b) The Procurement Officer shall refer to information prepared by DCMS regarding qualified sheltered workshops and categories of goods and services set aside to such sheltered workshops by DCMS. To the extent

- c) practicable, the SBE shall follow such set-asides. While notice and competition are not required prior to contracting with a sheltered workshop, prices shall be reasonable. Whether a price is reasonable shall be determined based upon current market prices, historical prices, prices received by other State agencies for similar supplies or services, the policy of the Code to promote procurements from sheltered workshops, and other such relevant factors.

Section 165.4540 Gas Mileage

- a) Vehicle specifications shall require compliance with minimum gas mileage requirements established in Section 45-40 of the Code.
- b) Requests for exceptions shall be approved by the CPO. Requests shall describe the circumstances necessitating a vehicle that is not in compliance.
- c) No exception shall be granted unless it is clear from the request that a vehicle that is not in compliance is necessary in order to carry out the functions of the SBE.

Section 165.4545 Small Business

- a) The Procurement Officer may determine categories of supplies or service procurements that will be set aside for small businesses located in Illinois. The set-aside designation may be made for current and future procurements of a specific supply, service or construction, or for a class of like supplies, services or construction. A set-aside designation may last indefinitely or for a stated period of time.
- b) The Procurement Officer may contact DCMS to determine whether a particular procurement has been set aside for small businesses and, if so, the SBE may honor the set-aside to the extent practicable.
- c) The Procurement Officer may use the list, maintained by DCMS or other appropriate State agency, of responsible vendors that meet the criteria of small business. A business that fits the definition of small on the day of bid or proposal opening shall be considered small for the duration of the contract.
- d) If the Procurement Officer wishes to make a procurement covered by a set-aside designation, the solicitation shall note responses are limited to those from responsible small businesses. Bids or proposals received from large businesses shall be rejected as not responsive.
- e) If the Procurement Officer determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the Procurement Officer shall reject all bids or proposals and withdraw the designation of small business set-aside for the procurement in question. When a small business set-aside is withdrawn, notification shall be published in the Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement shall be

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conducted in accordance with the limitations of the Code and this Part.

- f) Unless the Procurement Officer provides a definition for a particular procurement that reflects industrial characteristics, a small business is one:

- 1) that is independently owned and operated.
- 2) that is not dominant in its field of operations. This means the business does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining dominance, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

- 3) has annual sales for the most recently ended fiscal year no greater than:

- A) \$7,500,000 for wholesale business;
- B) \$3,000,000 for construction business; or
- C) \$1,500,000 for retail business.

- 4) has no more than 250 employees if it is a manufacturing business.

- A) A manufacturing business shall calculate how many people it employs by determining its average full-time equivalent employment, based on the number of persons employed on a full-time, part-time, temporary or other basis, for its most recently ended fiscal year.

- B) If a manufacturing business has been in existence for less than a full fiscal year, its average employment should be calculated for the period through one month prior to the bid or proposal due date.

- 5) If the business is any combination of retailer, wholesaler, and construction business, then the annual sales for each component may not exceed the amounts shown in subsection (f)(3) of this Section. For example, a business that is both a retailer and a wholesaler may not have total sales exceeding \$9,000,000; the retail component may not exceed \$1,500,000 and the wholesale component may not exceed \$7,500,000. If the business is also a manufacturer, in addition to meeting the annual sales requirement, the number of manufacturing employees may not exceed the number shown in subsection (f)(4) of this Section.

- 6) When computing the size status of a vendor, the number of employees and annual sales and receipts, as applicable, of the vendor and all affiliates shall be included. Concerns are affiliates when either one directly or indirectly controls or has the power to control the other, or when a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether affiliation exists, consideration shall be given to all

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appropriate factors, including use of common facilities, common ownership and management and contractual arrangements. However, a franchise relationship shall not affect small business status if the franchise has the right to profit commensurate with ownership and bears the risk of loss or failure.

- g) Vendors desiring to submit bids or proposals or to otherwise contract for items set aside for small businesses shall submit information verifying that the vendor qualifies as a small business as defined in subsection (f) of this Section. The CPO may establish procedures for verifying such information.

Section 165.4570 Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities

- a) The Business Enterprise Act for Minorities, Females, and Persons with Disabilities [30 ILCS 575] (Act) sets a goal (minimum 12 percent) for contracting with businesses owned or controlled by minorities, females, or persons with disabilities.
- b) Upon direction of the CPO, the SBE may establish set-asides and other such preferences for vendors certified under the Act.
- c) Certification procedures are set forth in rules governing the Business Enterprise Act (44 Ill. Adm. Code 10).
- d) The CPO may refer to the list of businesses that have been certified and maintained by DCMS.

SUBPART O: ETHICS

Section 165.5013 Conflicts of Interest

- a) This Section does not apply to those elected to local offices of government, including school districts, nor does it apply to those elected to federal offices in this State. This Section does apply to those elected to an office of Illinois State government.
- b) An individual has a direct pecuniary interest in a contract when the individual is owed a payment or otherwise receives a direct financial benefit in conjunction with performance of a contract, including finder's fees and commission payments.
- c) Distributable income means the income of a company after payment of all expenses, including employee salary and bonus, and retained earnings, which is distributed to those entitled to receive a share of such income. In the case of a for-profit corporation, "distributable income" means dividends. When calculating entitlement to distributable income, the entitlement shall be determined at the end of the company's most recent fiscal year.
- d) This Section does not apply to contracts with licensed professionals provided such contracts are competitively bid. For purposes of this Section, "bid" means procured pursuant to the competitive procedures identified in Subpart E of this Part.

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Section 165.5015 Negotiations for Future Employment

- a) It is unlawful for any person employed in or on a continual contractual relationship with any of the offices or agencies of State Government to participate in contract negotiations on behalf of that office or agency with any firm, partnership, association, or corporation with whom that person has a contract for future employment or is negotiating concerning possible future employment [30 ILCS 500/50-15(a)].*
- b) An individual who performs services pursuant to a contract and who meets the requirements of an "employee" as opposed to an independent contractor is in a "continued contractual relationship" from the effective date of the contract until such time as the contract is terminated.*
- c) An individual who performs services pursuant to a contract and who meets the requirements of an "independent contractor" as opposed to an "employee" is in a "continued contractual relationship" if the contract term is indefinite, is automatically renewed, is renewable at the individual's option, is renewable unless the State must act to terminate, or has a definite term of at least three months.*

Section 165.5020 Exemptions

If the Procurement Officer finds a conflict of interest under Section 50-13 of the Code with the vendor selected for award or contract negotiations, the Procurement Officer, if other than the CPO, shall forward to the CPO the name of the vendor and a description of the proposed contract and of the potential conflict, and shall state why an exemption should be granted. The CPO shall submit the files to the Board of Ethics for its determination and with the approval of the CPO, the Board of Ethics may exempt named individuals from the prohibitions of Section 50-13 of the Code when, in its judgment, the public interest in having the individual in the service of the State outweighs the public policy evidenced in that Section [30 ILCS 500/50-20].

Section 165.5030 Revolving Door

- a) The CPO or SPO shall identify designees in writing and shall maintain the information for the period of at least two years following the end or revocation of the designation.*
- b) Those designees whose job or descriptions are at least 51 percent directly related to State procurement are subject to this Section.*

Section 165.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

- a) Distributable or distributive income means the income of a company after payment of all expenses, including employee salaries and bonuses, and retained earnings, which is distributed to those entitled*

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to receive a share of such income.

- b) Personal services shall be any contract for services subject to the Code including, by way of example, professional and artistic services, repair services, and cleaning and guard services.*
- c) "Competitively bid" means a contract let pursuant to Section 20-10 of the Code.*
- d) The CPO may prescribe forms for the disclosure of potential conflicts of interest and financial interests of bidders or offerors required under Section 50-35 of the Code.*

SUBPART P: COMPLAINTS, PROTESTS AND REMEDIES**Section 165.5510 Complaints Against Vendors**

The purpose of this Section is to document performance of vendors.

- a) Whenever a vendor fails to meet contract requirements, including but not limited to failure to deliver on time or meet specifications, the SBE shall take appropriate action to initiate a complaint to the vendor.*
- b) For relatively minor infractions, the SBE may initiate contact by telephone or in person. If not resolved by this action, a written complaint shall be made.*
- c) For other infractions, the SBE shall send a written complaint to the vendor detailing the problem. For complaints regarding DCMS contracts, a form available from the DCMS shall be used for processing complaints.*
- d) A copy of all written complaints and the resolution or status shall be filed with the CPO and maintained by the SPO.*

Section 165.5520 Suspension

This Section applies to all debarments or suspensions of vendors from consideration for award of contract.

- a) The CPO may suspend a vendor from doing business with the SBE, or for specific types of supplies or services. A suspension may be issued upon a showing that the vendor violated the Code or this Part, or failed to conform to specifications or terms of delivery.*
- b) When the CPO finds cause exists for suspension, a notice of suspension, including a copy of such determination, shall be sent to the suspended vendor. Bids or proposals shall not be solicited from the suspended vendor, and, if they are received, they shall not be considered during the period of suspension.*
- c) A contractor may be suspended for a period of time commensurate with the seriousness of the offense, but for no more than five years. The suspension shall be effective within seven days after receipt of the notice unless an objection is filed. If an objection is filed, the suspension shall not become effective until the evaluation of the objection is completed.*

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- d) The CPO may debar a vendor. Debarment is the permanent suspension of a vendor from doing business with the SBE. A debarment may only take place in those instances involving bribery or attempted bribery of a State of Illinois officer or employee, or as otherwise allowed or required by law. Bids or proposals shall not be solicited from the debarred vendor, and if they are received, they shall not be considered.
- e) The SBE shall maintain a master list of all suspensions and debarments. The master list shall retain information concerning suspensions and debarments as public records. Such records shall be maintained for a period of at least three years following the end of the suspension or debarment. Such public information may be considered in determining responsibility.

Section 165.5530 Resolution of Contract Controversies

- a) The CPO shall have the authority to resolve controversies.
- b) The SBE has the authority to accept delivery of supplies or services in accordance with contract requirements as satisfactory adjustment of a complaint.
- c) A proposal must be referred to and approved by the CPO if the vendor proposes to make an adjustment by:
- 1) substituting an alternative specification, or
 - 2) reducing the contract price by a certain amount to compensate for some failure to provide full performance under the contract.
- d) In any of the following cases, the CPO shall have the right to terminate or rescind any contract entered into under this Part:
- 1) The successful bidder fails to furnish a satisfactory performance bond within the time specified.
 - 2) The vendor fails to make delivery at the place or within the time specified in the contract or as ordered by the SBE.
 - 3) Any supplies or services provided under the contract are rejected (for not meeting specification, not conforming to sample, or not being in good condition when delivered) and are not promptly replaced by the vendor. If there are repeated rejections of the vendor's supplies or services, this shall be grounds for termination or rescission, even though the vendor offers to replace the supplies or services promptly.
 - 4) The vendor is guilty of misrepresentation (for example, misbranding of food or drugs) in connection with another contract for the sale of supplies or services to the SBE such that the vendor cannot reasonably be depended upon to fulfill its obligations as a responsible vendor under any of its contracts with the SBE.
 - 5) The vendor should be adjudged bankrupt; enter into receivership or make a general assignment for the benefit of creditors due to insolvency; disregard laws, rules, or instructions of the Procurement Officer; or act in violation of any provision of the

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- contract; or if the contract conflicts with any statutory or constitutional provision of the State of Illinois or of the United States.
- 6) Any other breach of contract or other unlawful act by the vendor.
- e) The SBE may cancel any contract it established if there is sufficient evidence to show that:
- 1) the contract was obtained by fraud, collusion, conspiracy, or other unlawful means; or
 - 2) the contract conflicts with any statutory provision of the State of Illinois or of the United States.
- f) If a contract is terminated or rescinded under this Section, the SBE may deduct from whatever is owed the vendor on that or any other contract an amount sufficient to compensate the SBE for any damages suffered by it because of the vendor's breach of contract or other unlawful act on the vendor's part on which the cancellation is based. The damages for which the SBE may be compensated as provided in this Section or by a suit on the vendor's performance bond or by other legal remedy shall include, but are not limited to, the following:
- 1) the additional cost of supplies or services bought elsewhere,
 - 2) cost of repeating the procurement procedure,
 - 3) any expenses incurred because of delay in receipt of supplies or services, and
 - 4) any other damages caused by the vendor's breach of contract or unlawful act.

Section 165.5540 Violation of Statute or Rule

- a) If the CPO determines that the solicitation or proposed award is in violation of statute or rule, the CPO may cancel the solicitation or proposed award, or make modifications to correct the violation, if such correction may be legally accomplished.
- b) Contracts based on awards or solicitations that were in violation of law shall be terminated at no cost to the SBE unless statute or rule allows the SBE to modify, ratify or take other corrective action.
- c) In all cases in which a contract is voided, the SBE shall endeavor to return those supplies delivered under the contract that have not been used or distributed. No further payments shall be made under the contract.

Section 165.5550 Protests

- a) An actual or prospective bidder, offeror, or vendor that may be aggrieved in connection with a procurement may file a protest on any phase of solicitation or award, including but not limited to specifications preparation, bid solicitation, or award.
- b) Complainants should seek resolution of their complaints initially with the office that issued the solicitation. Such complaints may be made verbally or in writing.

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- c) Filing of Protest
- 1) Protests shall be made in writing to the Procurement Officer, if applicable, and shall be filed within seven days after the protester knows or should have known of the facts giving rise to the protest. A protest is considered filed when physically received by the Procurement Officer. Protests filed after the seven-day period shall not be considered. In regard to a protest regarding specifications, the protest must be received within seven days after the date the solicitation was issued, and in any event must be received by the SBE at the designated address before the date for opening of bids or proposals.
 - 2) To expedite handling of protests, the envelope should be labeled "Protest." The written protest shall include as a minimum the following:
 - A) the name and address of the protester;
 - B) appropriate identification of the procurement and, if a contract has been awarded, its number;
 - C) a statement of reasons for the protest; and
 - D) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.
 - d) Any additional information requested by the SBE shall be submitted within the time periods established by the requesting source in order to expedite consideration of the protest. Failure of the protesting party to comply expeditiously with a request for information by the Procurement Officer may result in resolution of the protest without consideration of that information.
 - e) When a protest has been timely filed and before an award has been made, the CPO shall make no award of the contract until the protest has been resolved. If timely received but after award, the award shall be revoked without penalty and no award made until the protest has been resolved. In either case, the CPO may make the award or reinstate the award upon a determination that the needs of the SBE require an immediate award and performance under the contract.
 - f) A decision on a protest shall be made by the CPO as expeditiously as possible after receiving all relevant requested information. If a protest is sustained, the available remedies include, but are not limited to, reversal of award and cancellation or revision of the solicitation.
 - g) If an action concerning the protest has commenced in court, the CPO shall not act on the protest, but shall refer the protest to the Attorney General. This Section shall not apply when a court requests, expects, or otherwise expresses interest in the decision of the CPO.

SUBPART Q: SUPPLY MANAGEMENT AND DISPOSITIONS

Section 165.6010 Supply Management and Dispositions

- a) The SBE shall have general supervision of and accountability for tangible personal property and other supplies under its control subject to the requirements of the State Property Control Act [30 ILCS 605] and rules implementing that Act.
- b) The SBE shall order supplies on a schedule and in quantities so as to maintain no more than a 12-month supply in inventory. Supplies shall be ordered so as to maintain the minimum inventory commensurate with ability to meet agency needs. This 12-month inventory restriction does not apply to lifesaving medications, mechanical spare parts, or when a greater quantity is needed to meet minimum order quantities.
- c) The SBE shall periodically inventory all warehouses and similar storage areas under its jurisdiction.
- d) Insofar as feasible, practical and in accordance with other applicable law, the Procurement Officer shall transfer excess supplies to the Surplus Property Division of DCMS for disposition under the State Property Control Act [30 ILCS 605].

SUBPART R: GOVERNMENTAL JOINT PURCHASING

Section 165.6500 General

In an effort to make the procurement process more efficient, the SBE and other governmental units (including not-for-profit entities authorized by law to participate in joint purchasing) may agree to utilize each others' procurement contracts. This authority is governed by this Subpart and the Governmental Joint Purchasing Act [30 ILCS 525]. Only the CPO may enter into contracts under the Act when the SBE is a party to the contract.

Section 165.6510 No Agency Relationship

In any joint procurement situation, the other governmental unit shall issue its own purchase order, accept its own deliveries and make its own payments. The State of Illinois shall have no obligation to the vendor for payment of orders placed by other governmental units.

Section 165.6520 Obligations of Participating Governmental Units

If governmental units determine to use contracts established by the SBE or by DCMS on behalf of the SBE, then they shall:

- a) provide to the CPO a copy of the ordinance or resolution passed by the governing body of the governmental unit giving authority to make purchases from contracts issued by the State of Illinois;
- b) make all purchases under the State contracts for public use only and specifically prohibit personal use or consumption by any individual, public employee or official;
- c) make payment to the vendor within 30 days after receipt of supplies or services;
- d) place orders with the supplier directly using their own purchase order

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- forms. A copy of the purchase order shall also be sent to the CPO. This copy shall be used for statistical purposes and shall serve as notice that the governmental unit has complied with the bid action;
- e) inspect all items immediately for compliance with the contract specifications and report to the CPO any failure of suppliers to comply with the contract requirements; and
 - f) attempt to resolve disputes with the vendor before involving the CPO.

Section 165.6530 Use of Other Contracts

The SBE may utilize procurement contracts established by other authorized State agencies or units of government if:

- a) the contract was established by sealed bid or sealed proposal or is not required by the Code to be bid,
- b) the price is reasonable,
- c) an existing contract of the SBE would not be violated,
- d) it is allowed by the vendor,
- e) necessary State contract terms can be added, and
- f) State legal requirements are otherwise followed.

SUBPART S: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY**Section 165.7000 Severability**

If any provision of this Part or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without such invalid provision or application.

Section 165.7010 Government Furnished Property

If the SBE provides any property to the vendor in furtherance of the contract, such property shall remain the property of the State but may be consumed by the vendor if necessary to complete the contract. The vendor shall issue a receipt for the property and shall be responsible for its safekeeping and for return of unused property to the State.

Section 165.7015 Inspections

- a) The SBE may enter a vendor's or subcontractor's plant or place of business to:
 - 1) inspect supplies or services for acceptance by the State pursuant to the terms of a contract;
 - 2) audit the books and records of any vendor or subcontractor pursuant to Section 165.7020 of this Part;
 - 3) investigate an action to debar or suspend a person from consideration for award of contracts pursuant to the Code;
 - 4) determine whether the standards of responsibility have been met or are capable of being met;

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- 5) determine if the contract is being performed in accordance with its terms; and
 - 6) accomplish any other purpose permitted by law.
- b) Inspection and Testing of Supplies and Services
- 1) Contracts of the SBE may provide for the inspection of supplies and services at the vendor's or subcontractor's facility and the performance tests to determine whether the supplies or services conform to solicitation requirements, or, after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.
 - 2) The Procurement Officer may establish operational procedures governing the testing and trial use of equipment, material, and other supplies by the SBE, and the application of resulting information and data to specifications of procurement.
 - c) Inspections or tests shall be performed so as not to unduly delay the work of the vendor or subcontractor.
 - 1) No inspector other than the Procurement Officer may change any provision of the specifications or the contract without written authorization of the Procurement Officer. The presence or absence of an inspector shall not relieve the vendor or subcontractor from any requirements of the contract.
 - 2) When an inspection is made in the plant or place of business of a vendor or subcontractor, such vendor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.
 - 3) Inspection or testing of supplies and services performed at the plant or place of business of any vendor or subcontractor shall be performed at reasonable times.
 - d) On-site inspection of construction shall be performed in accordance with the terms of the contract.

Section 165.7020 Records and Audits

- a) Books and records that relate to the performance of a contract, including a subcontract, and that support amounts charged to the SBE shall be maintained:
 - 1) by a vendor for three years from the date of final payment under the prime contract;
 - 2) by a subcontractor for at least three years from the date of final payment under the subcontract;
 - 3) by a vendor and a subcontractor for such longer period of time as is necessary to complete ongoing or announced audits.
- b) Contract Audit
 - 1) The type of contract under which books and records should be audited is that in which price is based on costs or is subject to adjustment based on costs, or that in which auditing would be

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appropriate to assure satisfactory performance, such as a time and materials contract.

- 2) Situations in which an audit may be warranted include but are not limited to when a question arises in connection with:

- A) the financial condition, integrity, and reliability of the vendor or subcontractor;
- B) any prior audit experience;
- C) the adequacy of the vendor's or subcontractor's accounting system;
- D) the number or nature of invoices or reimbursement vouchers submitted by the vendor or subcontractor for payment;
- E) the use of federal assistance funds;
- F) the fluctuation of market prices affecting the contract; or
- G) any other situation in which the Procurement Officer finds that such an audit is necessary for the protection of the State's best interest.

Section 165.7025 Written Determinations

- a) When the Code or this Part requires a written determination, the officer required to prepare the determination may delegate its preparation, but the responsibility for and the execution of the determination shall not be delegated.
- b) Each written determination shall set out sufficient facts, circumstances, and reasoning as will substantiate the specific determination that is made.
- c) While an officer is responsible for the execution of the written determination, other State personnel, particularly technical personnel and appropriate personnel in the SBE, are responsible for furnishing to the cognizant official, in an accurate and adequate fashion, the information pertinent to the determination. When requested, such information shall be furnished in writing to the cognizant official who shall have the authority to decide the final form and content of the determination and to resolve any questions or conflicts arising with respect to the determination.
- d) The CPO is authorized to prescribe methods and operational procedures to be used in preparing written determinations.
- e) Each written determination shall be filed in the solicitation or contract file to which it applies, shall be retained as part of such file for so long as the file is required to be maintained, and, except as otherwise provided by statute or rule, shall be open to public inspection.

Section 165.7030 No Waiver of Sovereign Immunity

Nothing in this Part shall be deemed to be a waiver of sovereign immunity.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Recipient Rights

- 2) Code Citation: 59 Ill. Adm. Code 111

- 3) Section Numbers: 111.30
Proposed Action: Repealed

- 4) Statutory Authority: Section 111.10 implementing 29 USC 794 (1995) and 45 CFR 84 (1994); Section 111.20 implementing Americans with Disabilities Act (42 USC 12101 et seq.); Sections 2-102(a), 3-204, 3-205 and 4-205 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/2- 102(a), 3-204, 3-205 and 4-205]; Section 111.25 implementing Sections 2-102(a), 3-204, 3-205 and 4-203 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/2-102(a), 3-204, 3-205 and 4-205]; Section 111.30 implementing the National Voter Registration Act of 1993 (42 USC 1973gg (1995)); authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Department of Mental Health and Developmental Disabilities Act [20 ILCS 1705/5].

- 5) A Complete Description of the Subjects and Issues involved: Section 111.30 is being repealed and the information is being combined with previous Voter Registration rules found at 89 Ill. Adm. Code 880 and will now be found at 89 Ill. Adm. Code 512.

- 6) Will this proposed rulemaking replace an emergency rule currently in effect? No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Does this proposed rulemaking contain incorporations by reference? No

- 9) Are there any other amendments pending on this Part? No

- 10) Statement of Statewide Policy Objectives (if applicable): This rulemaking does not create or expand a State mandate.

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning these rules within 45 days after this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Ms. Susan Weir, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
3rd Floor Harris Bldg.
Springfield IL 62762

DEPARTMENT OF HUMAN SERVICES

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(217) 785-9772

FAX: (217) 557-1547

If because of physical disability you are unable to put comments into writing, you may make them orally to the person listed above.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary form compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: January 1998

The full text of the Proposed Amendment(s) begins on the next page:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 59: MENTAL HEALTH

CHAPTER I: DEPARTMENT OF HUMAN SERVICES

PART III

RECIPIENT RIGHTS

Section

111.10

Nondiscrimination on the basis of handicap in the delivery of services under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. 701 et seq., 1982)

111.20

Services to individuals who are deaf, hard-of-hearing, deaf-blind, or deafened (hearing impaired) and/or who use manual/visual communication

111.25

Services to individuals in Department facilities who are non-English or limited-English speaking

111.30

Voter registration for service applicants (Repealed)

AUTHORITY: Section 111.10 implementing 29 USC 794 (1995) and 45 CFR 84 (1994); Section 111.20 implementing Americans with Disabilities Act (42 USC 12101 et seq.); Sections 2-102(a), 3-204, 3-205 and 4-205 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/2-102(a), 3-204, 3-205 and 4-205]; Section 111.25 implementing Sections 2-102(a), 3-204, 3-205, and 4-205 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/2-102(a), 3-204, 3-205, and 4-205]; Section 111.30 implementing the National Voter Registration Act of 1993 (42 USC 1973gg (1995)); authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Department of Mental Health and Developmental Disabilities Act [20 ILCS 1705/5].

SOURCE: Adopted at 8 Ill. Reg. 22086, effective November 1, 1984; emergency amendment at 19 Ill. Reg. 13584, effective September 15, 1995, for a maximum of 150 days; emergency expired February 12, 1996; amended at 20 Ill. Reg. 5520, effective March 29, 1996; amended at 21 Ill. Reg. 15579, effective November 25, 1997; amended at 23 Ill. Reg. _____, effective _____.

Section 111.30 Voter registration for service applicants (Repealed)

In accordance with the National Voter Registration Act of 1993--(42--U.S.C. 1973gg--(1995))--all service applicants to Department facilities and community agencies receiving funds from the Department shall be informed of their rights concerning the application for voter registration for federal elections and shall be given an opportunity to apply to register to vote when applying for services.

a) Definitions

For the purposes of this Section the following terms are defined:

"applicant" or "service applicant"--An individual 18 years of age or older who requests mental health or developmental disabilities services for himself or herself or for whom services

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are requested. This includes wards of guardians of the person individuals alleged to be subject to involuntary or judicial admission and individuals committed to the Department as unfit to stand trial or not guilty by reason of insanity. It does not include individuals committed as guilty but mentally ill transferred to the Department from the Department of Corrections or who are pre-trial detainees or inmates of county jails.

"Community agency". An entity that provides mental health or developmental disabilities services through a grant agreement or purchase of service contract with the Department.

"Department". The Department of Mental Health and Developmental Disabilities.

"Information forms". Voter registration application forms on which individuals are asked if they want to apply to register to vote and to check a box indicating their preference.

"Mental health or developmental disabilities services". This phrase includes the following: examination; diagnosis; evaluation; training; outpatient treatment; hospitalization; psychotherapy; pharmaceuticals; residential care; day care; special living arrangements; sheltered employment; protective services; and counseling; it does not include crisis services.

b) Procedures for explanation of rights and presentation of application
1) When an applicant applies for mental health or developmental disabilities services to any community agency or facility operated by the Department, the staff shall:

A) Inform the applicant of his or her rights to execute or decline to execute a voter registration application as set out in the State Board of Elections rules at 36 Ill. Adm. Code 215.

B) Provide the applicant with an information form that asks if he or she would like to register to vote and containing boxes which can be checked to indicate whether the applicant would like to register to vote.

C) Provide the applicant with a voter registration application form supplied by the State Board of Elections, unless the applicant declines to apply to register to vote.

2) Staff shall not:

A) Seek to influence an applicant's political preference or party registration.

B) Display any such political preference or party allegiance.

C) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote or

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B) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services. (42 U.S.C. 1973gg-5(e)(5))

3) If the applicant indicates either by checking the appropriate box or verbally (if he or she cannot write) that he or she wants to apply to register to vote, staff shall assist the applicant in filling out the voter registration form. Assistance shall include, but not be limited to, translators (for non-English or limited-English speakers), sign language interpreters (for deaf or deafened individuals), readers (for sight-impaired persons) and a verbal explanation of the form as appropriate. The form shall then be mailed in accordance with subsection (c) of this Section.

4) If the applicant indicates by checking the appropriate box or verbally that he or she declines to apply to register, the staff shall ask the individual to sign the form and shall retain the form in accordance with subsection (d) of this Section.

5) If the applicant does not check either box and does not communicate any choice, the staff shall treat the lack of choice as a declination; note that the applicant did not indicate a preference on the form and retain the form in accordance with subsection (d) of this Section.

6) Staff shall offer the applicant an opportunity to apply to register to vote as set out in subsection (b)(1) of this Section on each admission unless the applicant indicates that he or she has applied to register to vote or indicates that he or she is already registered. Because it may be clinically contraindicated to offer the applicant the opportunity to apply to register to vote immediately on admission, staff may choose to wait until the applicant's clinical condition has stabilized before offering the opportunity to apply to register to vote. In all cases an applicant shall be offered the opportunity to apply to register to vote no later than 30 calendar days following the development of the initial treatment or habilitation plan. Each community agency or facility operated by the Department shall develop procedures to implement this requirement that are consistent with the clinical and programmatic needs of the applicant and the administrative and operational requirements of the agency or facility.

c) Procedures for registration

If an applicant executes an application for voter registration, staff shall send it to the election authority of the location where the applicant resides within 10 calendar days after the form is executed pursuant to the State Board of Elections rules at 36 Ill. Adm. Code 215.

d) Information forms

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- 1) ~~the facility or agency shall retain the information forms for five years after the execution of the form. The forms will be used for statistical reporting purposes and the forms or the names of those persons who executed them shall not be released.~~
- 2) ~~the information forms shall be stored separately from the recipient's clinical records.~~
- e) ~~Community agency certification~~
~~Community agencies shall certify to the Department annually that they were in compliance with the requirements of this Section and the applicable law.~~

(Source: Repealed at 23 Ill. Reg. _____, effective _____)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED RULE

- 1) Heading of the Part: Sexually Violent Persons

- 2) Code Citation: 59 Ill. Adm. Code 299

- 3) Section Numbers:

Proposed Action:

299.100	New Section
299.110	New Section
299.120	New Section
299.130	New Section
299.200	New Section
299.210	New Section
299.220	New Section
299.230	New Section
299.300	New Section
299.310	New Section
299.320	New Section
299.330	New Section
299.340	New Section
299.350	New Section
299.400	New Section
299.410	New Section
299.420	New Section
299.430	New Section
299.500	New Section
299.600	New Section
299.610	New Section
299.620	New Section
299.630	New Section
299.640	New Section
299.650	New Section
299.660	New Section
299.670	New Section
299.680	New Section
299.690	New Section
299.700	New Section
299.800	New Section
299.810	New Section
299.820	New Section
299.830	New Section
299.840	New Section
299.850	New Section
299.900	New Section
299.910	New Section
299.920	New Section
299.930	New Section
299.940	New Section

APPENDIX A

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED RULE

4) Statutory Authority: Implementing and authorized by the Sexually Violent Persons Commitment Act [725 ILCS 20]

5) A Complete Description of the Subjects and Issues involved: This Rulemaking establishes the operational directives of the Sexually Violent Commitment Act. The rulemaking sets forth standards for treatment and behavior.

6) Will this proposed rule replace an emergency rule currently in effect?
Yes

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed rule contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives (if applicable): This rulemaking does not create or expand a State mandate.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning these rules within 45 days after this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Ms. Susan Weir, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
3rd Floor Harris Bldg.
Springfield IL 62762
(217) 785-9772
FAX: (217) 557-1547

If because of physical disability you are unable to put comments into writing, you may make them orally to the person listed above.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance:
None

C) Types of professional skills necessary form compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: January 1998

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED RULE

The full text of the Proposed Rule is identical to the text of the Emergency Rule that appears in this issue of the *Illinois Register* on page 19610.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

1) Heading of the Part: Voter Registration Program

2) Code Citation: 89 Ill. Adm. Code 880

3) Section Numbers: Proposed Action:

880.10	Repealed
880.20	Repealed
880.30	Repealed
880.40	Repealed
880.50	Repealed
880.60	Repealed
880.70	Repealed

4) Statutory Authority: Implementing Section 3 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3] and the National Voter Registration Act of 1993 (42 USC 1973gg, et seq.)

5) A Complete Description of the Subjects and Issues Involved: Part 880 is being repealed and the information is being combined with previous Voter Registration rules found at 59 Ill. Adm. Code 111 and will now be found at 89 Ill. Adm. Code 512.

6) Will this proposed rulemaking replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed repealer contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives (if applicable): This rulemaking does not create or expand a State mandate.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning these rules within 45 days after this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Ms. Susan Weir, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
3rd Floor Harris Bldg.
Springfield IL 62762
(217) 785-9772
FAX: (217) 557-1547

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

If because of physical disability you are unable to put comments into writing, you may make them orally to the person listed above.

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary form compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: January 1998

The full text of the Proposed Repealer begins on the next page:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

TITLE 89: SOCIAL SERVICES
 CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
 SUBCHAPTER h: MISCELLANEOUS PROGRAMS

PART 880

VOTER REGISTRATION PROGRAM (REPEALED)

- Section
 880.10 Definitions
 880.20 General Authority
 880.30 Opportunities for Registration to Vote
 880.40 Effect on Registration to Vote on Determination of Eligibility for DHS-ORS Services, or Receiving Continued or Further Services
 880.50 Procedures for Registration to Vote
 880.60 Disposition of Declaration and Registration Forms
 880.70 Registration Opportunities for Students Attending DHS Residential Schools

AUTHORITY: Implementing Section 3 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3] and the National Voter Registration Act of 1993 (42 USC 19739g, et seq.).

SOURCE: Emergency rules adopted at 19 Ill. Reg. 13590, effective September 25, 1995, for a maximum of 150 days; adopted at 20 Ill. Reg. 3330, effective February 2, 1996; recodified from the Department of Rehabilitation Services to the Department of Human Services at 21 Ill. Reg. 9325; repealed at 23 Ill. Reg. _____, effective _____.

Section 880.10 Definitions

For the purpose of this Part, the following terms shall have the following meanings:

Customer - any individual who is 18 years of age or older and has applied for or been determined eligible to receive services through DHS-ORS Vocational Rehabilitation (VR) Program, Total Life Planning (TLP) Program, Home Services Program (HSP), or Community Residential Services for the Blind and Visually Impaired (CRSBVI).

DHS-ORS - the Department of Human Services-Office of Rehabilitation Services.

DHS-ORS Staff - for the purpose of voter registration, a rehabilitation counselor, rehabilitation instructor, rehabilitation case coordinator, marketing and employment specialist, or any contractor determined by DHS-ORS appropriate to take applications for voter registration.

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NOTICE OF PROPOSED REPEALER

Representative - any individual designated by the customer as having the authority to sign documents related to application for voter registration on behalf of the customer.

Section 880.20 General Authority

Pursuant to the National Voter Registration Act of 1993 (42 USC 19739g), DHS-ORS staff shall offer the opportunity to apply to register to vote in federal elections to any customer, as defined in Section 880.10 above.

Section 880.30 Opportunities for Registration to Vote

a) A customer shall be offered the opportunity to apply to register to vote in federal elections only and provided a copy of his/her rights regarding registration at the following times while he/she is receiving services from DHS-ORS, as appropriate to the program through which the customer is receiving services.

- 1) At the time of application for services.
 - 2) For a customer of the VR Program, at the time of annual review of his/her Individualized Written Rehabilitation Program (IWRP) (89 Ill. Adm. Code 572).
 - 3) For a customer of HSP, at the time of redetermination of eligibility (89 Ill. Adm. Code 698).
- b) Further, at any time the customer requests to apply to register during the period of time he/she is actively receiving services from DHS-ORS or notifies DHS-ORS of a change of address, the customer shall be provided a mail-in voter registration application.

Section 880.40 Effect on Registration to Vote on Determination of Eligibility for DHS-ORS Services, or Receiving Continued or Further Services

- a) DHS-ORS staff shall offer the opportunity for any customer to apply to register to vote in federal elections; however, the decision to apply to register or decline to apply to register shall be the sole decision of the customer. DHS-ORS will neither persuade nor dissuade a customer in the decision.
- b) The decision to apply to register to vote shall have no bearing on the determination of the customer's eligibility for the services from DHS-ORS for which he/she has applied, nor shall it affect the customer's eligibility for future or continued services or benefits from DHS-ORS.

Section 880.50 Procedures for Registration to Vote

At each of the points of service listed in Section 880.30(a), a customer will be provided a copy and explanation of his/her rights, as they pertain to voter registration for federal elections, and will be provided a form to declare his/her choice to apply to register to vote in federal elections, or his/her

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED REPEALER

declination to apply to register to vote. The form, with the customer's choice indicated, must be dated and signed by the customer, or as appropriate, the customer's representative.

- a) If the customer, at his/her own choice, chooses to apply to register to vote in federal elections only, he/she will be given the appropriate forms to complete in private to apply to register to vote. If requested, DHS-ORS staff will provide assistance in the completion of the registration forms.
- b) If the customer, at his/her own choice, declines to apply to register to vote, the DHS-ORS staff person shall ensure the declaration form is correctly completed.

Section 880.60 Disposition of Declaration and Registration Forms

- a) After completion of the declaration form described in Section 880.50, above, the form shall be retained by DHS-ORS in a confidential manner separate from the customer's case record and for a minimum of 2 years. The form shall be retained by DHS-ORS for the purpose of statistical reporting and to verify an individual customer's choice regarding application to register to vote.
- b) If the customer has chosen to apply to register to vote, and completes the registration form prescribed by the Illinois State Board of Elections, the forms shall be forwarded to the appropriate election authority, in a manner to protect the confidentiality of the customer, to process the customer's registration.
- c) Pursuant to the time frames established by the Illinois State Board of Elections for the transmission of applications for voter registration for federal elections only at 26 Ill. Adm. Code 215, DHS-ORS shall submit completed applications to the local election officials as follows:
 - 1) within 10 days after the date of receipt if received by DHS-ORS 5 or more days prior to the close of voter registration; or
 - 2) within 5 days if received 5 days or less from the close of voter registration.

Section 880.70 Registration Opportunities for Students Attending DHS Residential Schools

In addition to the opportunities given DHS-ORS customers to register to vote under the National Voter Registration Act of 1993 (42 USC 1973gg), all students who are at least 18 years of age who are attending the Illinois School for the Deaf, the Illinois School for the Visually Impaired, or the Illinois Center for Rehabilitation and Education-Roosevelt will be given the opportunity to register to vote pursuant to Section 880.30 of this Part.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED RULE

- 1) Heading of the Part: Voter Registration Program
- 2) Code Citation: 89 Ill. Adm. Code 512
- 3) Section Numbers: Proposed Action:
512.10 New Section
512.20 New Section
512.30 New Section
- 4) Statutory Authority: Implementing the Department of Human Service Act [20 ILCS 1305] and the National Voter Registration Act of 1993 (42 USC 1973gg, et seq.)
- 5) A Complete Description of the Subjects and Issues involved: This rulemaking combines previous Voter Registration rules found at 89 Ill. Adm. Code 880 and 59 Ill. Adm. Code 111.30.
- 6) Will this proposed rule replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed rule contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives (if applicable): This rulemaking does not create or expand a State mandate.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning these rules within 45 days after this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Ms. Susan Weir, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
3rd Floor Harris Bldg.
Springfield IL 62762
(217) 785-9772
FAX: (217) 557-1547

If because of physical disability you are unable to put comments into writing, you may make them orally to the person listed above.

12) Initial Regulatory Flexibility Analysis:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED RULE

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance:
None

C) Types of professional skills necessary form compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: January 1998

The full text of the Proposed Rule begins on the next page:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED RULE

TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER h: MISCELLANEOUS PROGRAMS

PART 512

VOTER REGISTRATION PROGRAM

Section

512.10 Definitions

512.20 Opportunities for Voter Registration

512.30 Disposition of Voter Registration Forms

AUTHORITY: Implementing the Department of Human Service Act [20 ILCS 1305] and the National Voter Registration Act of 1993 (42 USC 1973gg, et seq.).

SOURCE: Adopted at 23 Ill. Reg. _____, effective _____.

Section 512.10 Definitions

For the purpose of this Part, the following terms shall have the following meanings:

Client - means any individual who will be at least 18 years of age on the day of the next election who is applying for, is determined or redetermined eligible for, or is being recertified or redetermined to be eligible for, or is receiving, services for persons with disabilities or public assistance from the Illinois Department of Human Services (DHS). No person who has been legally convicted in this or another State or in any federal court of any crime, and is serving a sentence of confinement in any penal institution, or who has been convicted and is serving a sentence of confinement in any penal institution, shall vote, offer to vote, attempt to vote or be permitted to vote at any election until his release from confinement, and thus is not considered a client for the purposes of this Part.

DHS Staff - means:

an individual who is employed by any DHS Office or facility whose duties include contact with clients; or

contractors that provide State-funded programs to provide services to persons with disabilities and/or provide public assistance services.

Section 512.20 Opportunities for Voter Registration

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED RULE

- a) In accordance with the National Voter Registration Act of 1993 (42 USC 1973gg, et seq.), DHS staff are required to provide clients the opportunity to apply to register to vote and to assist clients, if requested, in the completion of voter registration applications or declaration forms. Opportunities for application for Voter Registration shall be provided at the time of application for services, annual review, recertification or reassessment of services.

1) DHS staff shall:

- A) Inform the client of his or her rights to execute or decline to execute a voter registration application.
 - B) Provide the client with a declaration form that asks if he or she would like the opportunity to apply to register to vote. Each client has the right to accept or decline the opportunity.
 - C) Provide to each client who does not decline to apply to register to vote the same degree of assistance with regard to the completion of the voter registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.
 - D) Provide the client with a mail-in voter registration application when the client provides notification to DHS of a change of address.
- 2) DHS staff shall not:
- A) seek to influence a client's political preference;
 - B) display any political preference or party allegiance;
 - C) make any statement or take any action to encourage or discourage an applicant from registering to vote; or
 - D) make any statement or take any action to lead a client to believe that a decision to register or not to register will affect the services provided.
- b) If the client indicates either by checking the appropriate box on the declaration form or verbally (if he or she cannot write) that he or she desires to apply to register to vote, DHS staff shall assist the client in the completion of the voter registration application, if requested. Assistance shall include, but not be limited to, sign-language interpreters (for deaf and hard of hearing individuals), readers (for blind and visually impaired individuals), and a verbal explanation of the application, as appropriate. DHS Mental Health Facilities staff may offer voter registration after admission in instances where it may be clinically ill-advised to do so upon admission. DHS staff shall ask the client to sign the declaration form and shall retain the form in accordance with Section 512.30.
- c) If the client indicates either by checking the appropriate box on the declaration form or verbally that he or she declines to apply to register, DHS staff shall ask the individual to sign the form and shall retain the form in accordance with Section 512.30.
- d) If the client does not check the appropriate box and does not

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED RULE

communicate any choice, DHS staff shall treat this as a declination, note that the client did not indicate a preference on the form and retain the form in accordance with Section 512.30.

Section 512.30 Disposition of Voter Registration Forms

- a) The completed declaration form shall be retained by DHS in a confidential manner separate from the client's DHS file for a minimum of 2 years.
- b) If the client has chosen to apply to register to vote, and completes the registration application prescribed by the Illinois State Board of Elections, the application shall be forwarded to the appropriate local election authority in a manner to protect the confidentiality of the client.
- c) DHS shall submit completed voter registration applications to the local election authority as follows:
 - 1) within 10 days after the date of receipt if received by DHS 5 or more days prior to the close of voter registration; or
 - 2) within 5 days if received 5 days or less from the close of voter registration.

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Income Tax

2) Code Citation: 86 Ill. Adm. Code 100

3) Section Numbers:
100.2470 Proposed Action:
Amendment

4) Statutory Authority: 110 ILCS 979/55

5) A Complete Description of the Subjects and Issues Involved: Section 55 of the Illinois Prepaid Tuition Act [110 ILCS 979/55] provides that assets of the Illinois Prepaid Tuition Trust Fund and its income are exempt from taxation, and that disbursements to a beneficiary are exempt from taxation to the extent used for educational purposes in compliance with the provisions of an Illinois prepaid tuition contract. This rulemaking amends the rule governing subtractions allowed for amounts exempt from taxation by virtue of Illinois law to provide for the exemptions allowed in Section 55 of the Illinois Prepaid Tuition Act.

6) Will this rulemaking replace any emergency rulemaking currently in effect?
No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this rulemaking contain incorporations by reference? No

9) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
100.9710	New Section	1/2/98, 22 Ill. Reg. 174
100.3370	Amendment	4/24/98, 22 Ill. Reg. 7118
100.3380	Amendment	4/24/98, 22 Ill. Reg. 7118

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed amendment may submit them in writing by no later than 45 days after publication of this notice to:

Paul Caselton
Associate Chief Counsel - Income Tax
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62708
(217) 782-7055

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: This rulemaking is made necessary by the enactment of Public Act 90-546.

The full text of the Proposed Amendment begins on the next page:

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Effect of Combined Net Operating Loss in Computing Illinois Base Income

Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Deadline for Filing Claims Based on Net Operating Losses Carried Back From a Combined Apportionment Year

100.2250

SUBPART D: ILLINOIS NET LOSS DEDUCTIONS OCCURRING ON OR AFTER
DECEMBER 31, 1986

Section
100.2300 Illinois Net Loss Deductions for Losses Occurring On or After December 31, 1986

100.2310 Computation of the Illinois Net Loss Deduction

100.2320 Determination of the Amount of Illinois Net Loss Carryovers

100.2330 Illinois Net Loss Carrybacks and Net Loss Carryovers for Losses Occurring on or After December 31, 1986

100.2340 Illinois Net Loss Deductions of Corporations That are Members of a Unitary Business Group: Separate Unitary Versus Combined Unitary Returns

100.2350 Illinois Net Loss Deductions of Corporations that are Members of a Unitary Business Group: Changes in Membership

SUBPART E: ADDITIONS TO AND SUBTRACTIONS FROM TAXABLE INCOME OF INDIVIDUALS,
CORPORATIONS, TRUSTS AND ESTATES AND PARTNERSHIPS

Section
100.2470 Subtraction of Amounts Exempt from Taxation by Virtue of Illinois Law, the Illinois or U.S. Constitutions, or by Reason of U.S. Treaties or Statutes (IITA Sections 203(a)(2)(N), 203(b)(2)(J), 203(c)(2)(K) and 203(d)(2)(G))

100.2480 Enterprise Zone Dividend Subtraction (IITA Sections 203(a)(2)(J), 203(b)(2)(K), 203(c)(2)(M) and 203(d)(2)(K))

SUBPART F: BASE INCOME OF INDIVIDUALS

Section
100.2580 Medical Care Savings Accounts (IITA Sections 203(a)(2)(D-5), 203(a)(2)(S) and 203(a)(2)(T))

100.2590 Taxation of Certain Employees of Railroads, Motor Carriers, Air Carriers and Water Carriers

SUBPART G: BASE INCOME OF TRUSTS AND ESTATES

Section
100.2680 Capital Gain Income of Estates and Trusts Paid to or Permanently Set

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 100
INCOME TAX

SUBPART A: TAX IMPOSED

Section
100.2000 Introduction

100.2050 Net Income (IITA Section 202)

SUBPART B: CREDITS

Section
100.2100 Replacement Tax Investment Credit Prior to January 1, 1994 (IITA 201(e))

100.2101 Replacement Tax Investment Credit (IITA 201(e))

100.2110 Investment Credit; Enterprise Zone (IITA 201(f))

100.2120 Jobs Tax Credit; Enterprise Zone and Foreign Trade Zone or Sub-Zone (IITA 201(g))

100.2130 Investment Credit; High Impact Business (IITA 201(h))

100.2140 Credit Against Income Tax for Replacement Tax (IITA 201(i))

100.2150 Training Expense Credit (IITA 201(j))

100.2160 Research and Development Credit (IITA 201(k))

100.2170 Tax Credits for Coal Research and Coal Utilization Equipment (IITA 206)

100.2180 Credit for Residential Real Property Taxes (IITA 208)

100.2195 Dependent Care Assistance Program Tax Credit (IITA 210)

SUBPART C: NET OPERATING LOSSES OF UNITARY BUSINESS GROUPS
OCCURRING PRIOR TO DECEMBER 31, 1986

Section
100.2200 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) - Scope

100.2210 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Definitions

100.2220 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Current Net Operating Losses; Offsets Between Members

100.2230 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Carrybacks and Carryforwards

100.2240 Net Operating Losses Occurring Prior to December 31, 1986, of

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

Aside for Charity

SUBPART I: GENERAL RULES OF ALLOCATION AND APPORTIONMENT OF
BASE INCOME

Section
100.3000 Terms Used in Article 3 (IITA Section 301)
100.3010 Business and Nonbusiness Income (IITA Section 301)
100.3020 Resident (IITA Section 301)

SUBPART J: COMPENSATION PAID TO NONRESIDENTS

Section
100.3100 Compensation (IITA Section 302)
100.3110 State (IITA Section 302)
100.3120 Allocation of Compensation Paid to Nonresidents (IITA Section 302)

SUBPART K: NON-BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section
100.3200 Taxability in Other State (IITA Section 303)
100.3210 Commercial Domicile (IITA Section 303)
100.3220 Allocation of Certain Items of Nonbusiness Income by Persons Other than Residents (IITA Section 303)

SUBPART L: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section
100.3300 Allocation and Apportionment of Base Income (IITA Section 304)
100.3310 Business Income of Persons Other than Residents (IITA Section 304) - In General
100.3320 Business Income of Persons Other Than Residents (IITA Section 304) - Apportionment
100.3330 Business Income of Persons Other Than Residents (IITA Section 304) - Allocation
100.3340 Business Income of Persons Other Than Residents (IITA Section 304)
100.3350 Property Factor (IITA Section 304)
100.3360 Payroll Factor (IITA Section 304)
100.3370 Sales Factor (IITA Section 304)
100.3380 Special Rules (IITA Section 304)
100.3390 Petitions for Alternative Allocation or Apportionment (IITA Section 304(f))

SUBPART N: TIME AND PLACE FOR FILING RETURNS

Section
100.5000 Time for Filing Returns: Individuals (IITA Section 505)
100.5010 Place for Filing Returns: All Taxpayers (IITA Section 505)

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

100.5020 Extensions of Time for Filing Returns: All Taxpayers (IITA Section 505)
100.5030 Taxpayer's Notification to the Department of Certain Federal Changes Arising in Federal Consolidated Return Years, and Arising in Certain Loss Carryback Years (IITA Section 506)

SUBPART O: COMPOSITE RETURNS

Section
100.5100 Composite Returns: Eligibility
100.5110 Composite Returns: Responsibilities of Authorized Agent
100.5120 Composite Returns: Individual Liability
100.5130 Composite Returns: Required forms and computation of Income
100.5140 Composite Returns: Estimated Payments
100.5150 Composite Returns: Tax, Penalties and Interest
100.5160 Composite Returns: Credit for Resident Individuals
100.5170 Composite Returns: Definition of a "Lloyd's Plan of Operation"

SUBPART P: COMBINED RETURNS

Section
100.5200 Filing of Combined Returns
100.5201 Definitions and Miscellaneous Provisions Relating to Combined Returns
100.5205 Election to File a Combined Return
100.5210 Procedures for Elective and Mandatory Filing of Combined Returns
100.5220 Designated Agent for the Members
100.5230 Combined Estimated Tax Payments
100.5240 Claims for Credit of Overpayments
100.5250 Liability for Combined Tax, Penalty and Interest
100.5260 Combined Amended Returns
100.5265 Common Taxable Year
100.5270 Computation of Combined Net Income and Tax
100.5280 Combined Return Issues Related to Audits

SUBPART Q: REQUIREMENT AND AMOUNT OF WITHHOLDING

Section
100.7000 Requirement of Withholding (IITA Section 701)
100.7010 Compensation Paid in this State (IITA Section 701)
100.7020 Transacting Business Within this State (IITA Section 701)
100.7030 Payments to Residents (IITA Section 701)
100.7040 Employer Registration (IITA Section 701)
100.7050 Computation of Amount Withheld (IITA Section 701)
100.7060 Additional Withholding (IITA Section 701)
100.7070 Voluntary Withholding (IITA Section 701)
100.7080 Correction of Underwithholding or Overwithholding (IITA Section 701)
100.7090 Reciprocal Agreement (IITA Section 701)

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

100.7095 Cross References

SUBPART R: AMOUNT EXEMPT FROM WITHHOLDING

Section

100.7100 Withholding Exemption (IITA Section 702)

100.7110 Withholding Exemption Certificate (IITA Section 702)

100.7120 Exempt Withholding Under Reciprocal Agreements (IITA Section 702)

SUBPART S: INFORMATION STATEMENT

Section

100.7200 Reports for Employee (IITA Section 703)

SUBPART T: EMPLOYER'S RETURN AND PAYMENT OF TAX WITHHELD

Section

100.7300 Returns of Income Withheld from Wages (IITA Section 704)

100.7310 Quarterly Returns Filed on an Annual Basis (IITA Section 704)

100.7320 Time for Filing Returns (IITA Section 704)

100.7330 Payment of Tax Deducted and Withheld (IITA Section 704)

100.7340 Correction of Underwithholding or Overwithholding (IITA Section 704)

SUBPART U: COLLECTION AUTHORITY

Section

100.9000 General Income Tax Procedures (IITA Section 901)

100.9010 Collection Authority (IITA Section 901)

100.9020 Child Support Collection (IITA Section 901)

SUBPART V: NOTICE AND DEMAND

Section

100.9100 Notice and Demand (IITA Section 902)

SUBPART W: ASSESSMENT

Section

100.9200 Assessment (IITA Section 903)

100.9210 Waiver of Restrictions on Assessments (IITA Section 907)

SUBPART X: DEFICIENCIES AND OVERPAYMENTS

Section

100.9300 Deficiencies and Overpayments (IITA Section 904)

100.9310 Application of Tax Payments Within Unitary Business Groups (IITA Section 603)

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

100.9320 Limitations on Notices of Deficiency (IITA Section 905)

100.9330 Further Notices of Deficiency Restricted (IITA Section 906)

SUBPART Y: CREDITS AND REFUNDS

Section

100.9400 Credits and Refunds (IITA Section 909)

100.9410 Limitations on Claims for Refund (IITA Section 911)

100.9420 Recovery of Erroneous Refund (IITA Section 912)

SUBPART Z: INVESTIGATIONS AND HEARINGS

Section

100.9500 Access to Books and Records (IITA Section 913)

100.9505 Access to Books and Records -- 60-Day Letters (IITA Section 913)

100.9510 Taxpayer Representation and Practice Requirements

100.9520 Conduct of Investigations and Hearings

SUBPART AA: JUDICIAL REVIEW

Section

100.9600 Administrative Review Law (IITA Section 1201)

SUBPART BB: DEFINITIONS

Section

100.9700 Unitary Business Group Defined (IITA Section 1501)

SUBPART CC: LETTER RULING PROCEDURES

Section

100.9800 Letter Ruling Procedures

APPENDIX A

Business Income Of Persons Other Than Residents

TABLE A Example of Unitary Business Apportionment

TABLE B Example of Unitary Business Apportionment for Groups Which Include Members Using Three-Factor and Single-Factor Formulas

AUTHORITY: Implementing the Illinois Income Tax Act [35 ILCS 5] and authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5/1401].

SOURCE: Filed July 14, 1971, effective July 24, 1971; amended at 2 Ill. Reg. 49 p. 84, effective November 29, 1978; amended at 5 Ill. Reg. 813, effective January 7, 1981; amended at 5 Ill. Reg. 4617, effective April 14, 1981; amended at 5 Ill. Reg. 4642, effective April 14, 1981; amended at 5 Ill. Reg. 5537, effective May 7, 1981; amended at 5 Ill. Reg. 5705, effective May 20, 1981; amended at 5 Ill. Reg. 5883, effective May 20, 1981; amended at 5 Ill. Reg. 6843, effective June 16, 1981; amended at 5 Ill. Reg. 13244, effective November

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13, 1981; amended at 5 Ill. Reg. 13724, effective November 30, 1981; amended at 6 Ill. Reg. 579, effective December 29, 1981; amended at 6 Ill. Reg. 9701, effective July 26, 1982; amended at 7 Ill. Reg. 399, effective December 28, 1982; amended at 8 Ill. Reg. 6184, effective April 24, 1984; codified at 8 Ill. Reg. 19574; amended at 9 Ill. Reg. 16986, effective October 21, 1985; amended at 9 Ill. Reg. 685, effective December 31, 1985; amended at 10 Ill. Reg. 7913, effective April 28, 1986; amended at 10 Ill. Reg. 19512, effective November 3, 1986; amended at 10 Ill. Reg. 21941, effective December 15, 1986; amended at 11 Ill. Reg. 831, effective December 24, 1986; amended at 11 Ill. Reg. 2450, effective January 20, 1987; amended at 11 Ill. Reg. 12410, effective July 8, 1987; amended at 11 Ill. Reg. 17782, effective October 16, 1987; amended at 12 Ill. Reg. 4865, effective February 25, 1988; amended at 12 Ill. Reg. 6748, effective March 25, 1988; amended at 12 Ill. Reg. 11766, effective July 1, 1988; amended at 12 Ill. Reg. 14307, effective August 29, 1988; amended at 13 Ill. Reg. 8917, effective May 30, 1989; amended at 13 Ill. Reg. 10952, effective June 26, 1989; amended at 14 Ill. Reg. 4558, effective March 8, 1990; amended at 14 Ill. Reg. 6810, effective April 19, 1990; amended at 14 Ill. Reg. 10082, effective June 7, 1990; amended at 14 Ill. Reg. 16012, effective September 17, 1990; emergency amendment at 17 Ill. Reg. 473, effective December 22, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 8869, effective June 2, 1993; amended at 17 Ill. Reg. 13776, effective August 9, 1993; recodified at 17 Ill. Reg. 14189; amended at 17 Ill. Reg. 19632, effective November 1, 1993; amended at 17 Ill. Reg. 19966, effective November 9, 1993; amended at 18 Ill. Reg. 1510, effective January 13, 1994; amended at 18 Ill. Reg. 2494, effective January 28, 1994; amended at 18 Ill. Reg. 7768, effective May 4, 1994; amended at 19 Ill. Reg. 1839, effective February 6, 1995; amended at 19 Ill. Reg. 5824, effective March 31, 1995; emergency amendment at 20 Ill. Reg. 1616, effective January 9, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 6981, effective May 7, 1996; amended at 20 Ill. Reg. 10706, effective July 29, 1996; amended at 20 Ill. Reg. 13365, effective September 27, 1996; amended at 20 Ill. Reg. 14617, effective October 29, 1996; amended at 21 Ill. Reg. 958, effective January 6, 1997; emergency amendment at 21 Ill. Reg. 2969, effective February 24, 1997, for a maximum of 150 days; emergency expired July 24, 1997; amended at 22 Ill. Reg. 2234, effective January 9, 1998; amended at 22 Ill. Reg. 19033, effective October 1, 1998; amended at 23 Ill. Reg. _____, effective _____.

SUPPORT E: ADDITIONS TO AND SUBTRACTIONS FROM TAXABLE INCOME OF INDIVIDUALS, CORPORATIONS, TRUSTS AND ESTATES AND PARTNERSHIPS

Section 100.2470 Subtraction of Amounts Exempt from Taxation by Virtue of Illinois Law, the Illinois or U.S. Constitutions, or by Reason of U.S. Treaties or Statutes (ITPA Sections 203(a)(2)(N), 203(b)(2)(J), 203(c)(2)(K) and 203(d)(2)(G))

a) In calculating base income, taxpayers are entitled to subtract an amount equal to all amounts included in such total which are exempt from taxation by this State either by reason of its statutes or

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Constitution or by reason of the Constitution, treaties or statutes of the United States; provided that, in the case of any statute of this State that exempts income derived from bonds or other obligations from the tax imposed under this Act, the amount exempted shall be the interest net of bond premium amortization (ITPA 203(a)(2)(N)). There are also provisions of Illinois law that exempt the income of certain obligations of state and local governments from Illinois income taxation (see subsection (f), below).

b) Interest on obligations of the United States. A federal statute exempts stocks and obligations of the United States Government, as well as the interest on the obligation(s), from state income taxation (see 31 USC 545-6-7-3124(a)).

1) "Obligations of the United States" are those obligations issued "to secure credit to carry on the necessary functions of government." Smith v. Davis (1944) 323 U.S. 111, 119, 89 L. Ed. 107, 113, 65 S. Ct. 157, 161. The exemption is aimed at protecting the "Borrowing" and "Supremacy" clauses of the Constitution. Society for Savings v. Bowers (1955) 349 U.S. 143, 144, 99 L. Ed. 2d 950, 955, 75 S. Ct. 607, 608. Hibernia v. City and County of San Francisco (1906) 200 U.S. 310, 313, 50 L. Ed. 495, 496, 26 S. Ct. 265, 266.

A) Tax-exempt credit instruments possess the following characteristics:

- i) they are written documents,
- ii) they bear interest,
- iii) they are binding promises by the United States to pay specified sums at specified dates, and
- iv) they have congressional authorization which also pledges the faith and credit of the United States in support of the promise to pay. Smith v. Davis, supra.

B) A governmental obligation that is secondary, indirect, or contingent, such as a guaranty of a nongovernmental obligor's primary obligation to pay the principal amount of and interest on a note, is not an obligation of the type exempted under 31 USC 545-6-7-3124(a). Rockford Life Ins. Co. v. Department of Revenue, 107 S. Ct. 2312 (1987).

2) Based on the above, the following types of income are exempt under 31 USC 545-6-7-3124(a):

- A) Interest on U.S. Treasury bonds, notes, bills, certificates, and savings bonds.
- B) Income from GSA Public Building Trust Participation Certificates: First Series, Series A through E; Second Series, Series F; Third Series, Series G; Fourth Series H and I.

c) Income exempted by reason of other federal statutes. Federal statutes provide exemption from state income taxation with respect to various specifically named types of income. Following is a list (intended to be exhaustive) of exempt income and the specific statutes to which

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each item relates:

- 1) Banks for Cooperatives - Income from notes, debentures, and other obligations issued by Banks for Cooperatives (12 USCA 8-S-6-A- 2134).
- 2) Commodity Credit Corporation - Interest derived from bonds, notes, debentures, and other similar obligations issued by Commodity Credit Corporation (15 USCA 8-S-6-A- 713a-5).
- 3) Farm Credit System Financial Assistance Corporation (Financial Assistance Corporation) - Income from notes, bonds, debentures, and other obligations issued by the Financial Assistance Corporation (12 USCA 8-S-6-A- 2278b-10(b)).
- 4) Federal Deposit Insurance Corporation - Interest derived from notes, debentures, bonds, or other such obligations issued by Federal Deposit Insurance Corporation (12 USCA 8-S-6-A- 1825).
- 5) Federal Farm Credit Banks - Income from consolidated system-wide notes, bonds, debentures, and other obligations issued jointly and severally under 12 USCA 8-S-6-A- 2153 by Banks of the Federal Farm Credit System (12 USCA 8-S-6-A- 2023; 12 USCA 8-S-6-A- 207; 12 USCA 8-S-6-A- 2098; and 12 USCA 8-S-6-A- 2134).
- 6) Federal Home Loan Banks - Interest derived from notes, debentures, bonds, and other such obligations issued by Federal Home Loan Banks and from consolidated Federal Home Loan bonds and debentures (12 USCA 8-S-6-A- 1433).
- 7) Federal Intermediate Credit Banks - Income from notes, debentures, bonds, and other obligations issued by Federal Intermediate Credit Banks (12 USCA 8-S-6-A- 2079).
- 8) Federal Land Banks and Federal Land Bank Association - Income from notes, debentures, bonds, and other obligations issued by Federal Land Banks and Federal Land Bank Associations (12 USCA 8-S-6-A- 2055).
- 9) Federal Savings and Loan Insurance Corporation - Interest derived from notes, bonds, debentures, and other such obligations issued by Federal Savings and Loan Insurance Corporation (12 USCA 8-S-6-A- 1725(e)).
- 10) Financing Corporation (FICO) - Income from obligations issued by the Financing Corporation (12 USCA 8-S-6-A- 1441(e)(8)).
- 11) General Insurance Fund
 - A) Interest derived from debentures issued by General Insurance Fund under the War Housing Insurance Law (12 USCA 8-S-6-A- 1739(d)); or
 - B) Interest derived from debentures issued by General Insurance Fund to acquire rental housing projects (12 USCA 8-S-6-A- 1747g(g)); or
 - C) Interest derived from Armed Services Housing Mortgage Insurance Debentures issued by the General Insurance Fund (12 USCA 8-S-6-A- Section 1748b(f)).
- 12) Guam - Interest derived from bonds issued by the government of Guam (48 USCA 8-S-6-A- 1423a). This income is not presently

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- included in federal taxable income. Under Illinois law, it must be added back to federal taxable income and then claimed as a subtraction on an Illinois income tax return.
- 13) Mutual Mortgage Insurance Fund - Income from such debentures as are issued in exchange for property covered by mortgages insured after February 3, 1988 (12 USCA 8-S-6-A- 1710(d)). This income is not presently included in federal taxable income. Under Illinois law, it must be added back to federal taxable income and then claimed as a subtraction on an Illinois income tax return.
 - 14) National Credit Union Administration Central Liquidity Facility - Income from the notes, bonds, debentures, and other obligations issued on behalf of the Central Liquidity Facility (12 USCA 8-S-6-A- 1795K(b)).
 - 15) Production Credit Association - Income from notes, debentures, and other obligations issued by Production Credit Association (12 USCA 8-S-6-A- 2098).
 - 16) Puerto Rico - Interest derived from bonds issued by the Government of Puerto Rico (48 USCA 8-S-6-A- 745). This income is not presently included in federal taxable income. Under Illinois law, it must be added back to federal taxable income and then claimed as a subtraction on an Illinois income tax return.
 - 17) Railroad Retirement Act - Annuity and supplemental annuity payments as qualified under the Railroad Retirement Act of 1974 (45 USCA 8-S-6-A- 231m). Please be sure to use the line specified on your Illinois return for this item.
 - 18) Railroad Unemployment Insurance Act - Unemployment benefits paid pursuant to the Railroad Unemployment Insurance Act (45 USCA 8-S-6-A- 352(e)).
 - 19) Resolution Funding Corporation - Interest from obligations issued by the Resolution Funding Corporation (12 USCA 8-S-6-A- 1441b(f)(7)(A)).
 - 20) Special Food Service Program - Assistance to children under the Special Food Service Program (42 USCA 8-S-6-A- 1760(e)).
 - 21) Student Loan Marketing Association - Interest derived from obligations issued by the Student Loan Marketing Association (20 USCA 8-S-6-A- 1087-2(h)(221)).
 - 22) Tennessee Valley Authority - Interest derived from bonds issued by the Tennessee Valley Authority (16 USCA 8-S-6-A- 831n-4(d)).
 - 23) United States Postal Service - Interest derived from obligations issued by the United States Postal Service (39 USCA 8-S-6-A- 2005(d)(4)).
 - 24) Virgin Islands - Interest derived from bonds issued by the Government of the Virgin Islands (48 USCA 8-S-6-A- 1574(b)(ii)(A)). This income is not presently included in income taxable federally. Under Illinois law, it must be added back to federal taxable income and then claimed as a subtraction on an Illinois income tax return.
- d) Distributions from money market trusts (mutual funds). Taxpayers may

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subtract income received from any of the obligations listed in subsections (b) and (c) above, even if the obligations are owned indirectly through owning shares in a mutual fund.

- 1) If the fund invests exclusively in these state tax exempt obligations, the entire amount of the distribution (income) from the fund may be subtracted.
- 2) If the fund invests in both exempt and non-exempt obligations, the amount represented by the percentage of the distribution that the mutual fund identifies as exempt may be subtracted.
- 3) If the mutual fund does not identify an exempt amount or percentage, taxpayers may figure the subtraction by multiplying the distribution by the following fraction: as the numerator, the amount invested by the fund in state-exempt U.S. obligations; as the denominator, the fund's total investment. Use the year-end amounts to figure the fraction if the percentage ratio has remained constant throughout the year. If the percentage ratio has not remained constant, take the average of the ratios from the fund's quarterly financial reports.
- e) Getting a refund of tax you already paid. If you paid Illinois income tax on these state tax exempt distributions, you may file an amended return (IL-1040-X) to claim a refund for any year still within the statute of limitations.
- f) Interest on obligations of state and local governments. Income from state and local obligations is not exempt from Illinois income tax except where authorizing legislation adopted after August 1, 1969, specifically provides for an exemption. To date, authorizing legislation provides exemption for the income from the securities listed below. Taxpayers must show income from these exempt bonds as an addition and then as a subtraction on the Illinois income tax return. Income from these bonds is not exempt if the bonds are owned indirectly through owning shares in a mutual fund.
 - 1) Notes and bonds issued by the Illinois Housing Development Authority (except housing-related commercial facilities notes and bonds) [20 ILCS 3805/31].
 - 2) Bonds authorized pursuant to the Export Development Act of 1983 (former Ill. Rev. Stat. 1991, ch. 127, par. 2513, repealed by P.A. 87-860, effective July 1, 1992).
 - 3) Bonds issued by the Illinois Development Finance Authority pursuant to Sections 7.50 - 7.61 (venture fund and infrastructure bonds) [20 ILCS 3505/7.61].
 - 4) Bonds and notes issued by the Quad Cities Regional Economic Development Authority, if the Authority so determines [70 ILCS 510/11, 510/13, 515/11, and 515/12].
 - 5) College Savings Bonds issued under the General Obligation Bond Act in accordance with the Baccalaureate Savings Act [110 ILCS 920/7].
 - 6) Bonds issued by the Illinois Sports Facilities Authority (White Sox Bonds) [70 ILCS 3205/15].

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- 7) Bonds issued on or after September 2, 1988, pursuant to the Higher Education Student Assistance Act [110 ILCS 947/145] (transferred from 105 ILCS 5/30-15.18 by P.A. 87-997).
- 8) Bonds issued by the Illinois Development Finance Authority under the Asbestos Abatement Finance Act [20 ILCS 3510/8].
- 9) Bonds and notes issued under the Rural Bond Bank Act [30 ILCS 360/3-12].
- 10) Income earned on investments made pursuant to the Home Ownership Made Easy Program [310 ILCS 55/5.1].
- 11) Bonds issued pursuant to Sections 7.80 - 7.87 of the Illinois Development Finance Authority Act [20 ILCS 3505/7-86].
- 12) Up to \$2,000 of income derived by individuals from investments made in accordance with College Savings Programs established under former Section 30-15.8a [105 ILCS 5/30-15.8a].
- 13) Bonds issued by the Quad Cities Interstate Metropolitan Authority under the Quad Cities Interstate Metropolitan Authority Act [45 ILCS 35/110].
- 14) Bonds issued by the Southwestern Illinois Development Authority pursuant to the Southwestern Illinois Development Authority Act [70 ILCS 520/7.5].
- g) Other income exempt from Illinois income taxation by reason of Illinois statute:
 - 1) Income earned by certain trust accounts established under the Illinois Pre-Need Cemetery Sales Act [815 ILCS 390/16]. Section 16(f) of the Illinois Pre-Need Cemetery Sales Act provides that: *because it is not known at the time of deposit or at the time that income is earned on the trust account to whom the principal and the accumulated earnings will be distributed, for purposes of determining the Illinois Income Tax due on these trust funds, the principal and any accrued earnings or losses relating to each individual account shall be held in suspense until the final determination is made as to whom the account shall be paid.*
 - 2) Income in the form of education loan repayments made for primary care physicians who agree to practice in designated shortage areas for a specified period of time under the terms of the Family Practice Residency Act [110 ILCS 935/4.10].
 - 3) Income earned by nuclear decommissioning trusts established pursuant to Section 8-508.1 of the Public Utilities Act [220 ILCS 5/8-508.1]. The terms "Decommissioning trust" or "trust" means a fiduciary account in a bank or other financial institution established to hold the decommissioning funds provided pursuant to Section 8-508.1(b)(2) of the Public Utilities Act for the eventual purpose of paying decommissioning costs, which shall be separate from all other accounts and assets of the public utility establishing the trust. [220 ILCS 5/8-508.1(a)(3)]
 - 4) Income from the Illinois prepaid tuition program, other than disbursements to beneficiaries which are not used in accordance with the applicable prepaid tuition contract under the Illinois

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tax purposes, such agreements are generally to be treated as loans. That is, the taxpayer "loans" money to the bank and receives interest in return. The securities subject to repurchase by the bank serve as collateral for the loan. The bank remains legally entitled to receive the interest payments from the issuing authority and remains the actual owner of the securities. Therefore, any tax benefit attributable to the "exempt" income paid by the issuing authority accrues to the bank and not to the investor.

- i) Method for computing the subtraction of exempt income. The Department emphasizes that before a taxpayer may subtract an item of exempt income, the taxpayer must be sure that he or she has included the item in Illinois income. Some tax-exempt items are "automatically" included in base income because they are included in federal adjusted gross income, which is a part of base income. Interest on U.S. Treasury notes is in this category. Other exempt items must be included as an addition on the Illinois tax return in figuring base income. In other words, the taxpayer must list certain tax-exempt items as additions and then as subtractions in figuring base income. Interest on the state and local government bonds described in subsection (f) above is in this category.

(Source: Amended at 23 Ill. Reg. _____, effective _____)

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Prepaid Tuition Act [110 ILCS 979]. The Illinois prepaid tuition program was created in 1997 for the express purpose of allowing savings for higher education to earn tax-exempt returns under Section 529 of the Internal Revenue Code. If a prepaid tuition contract qualifies under Section 529, earnings on contributions made to the Illinois Prepaid Tuition Trust Fund under the contract are exempt from federal income taxation (and therefore Illinois income taxation) until distributed. The legislative intent in creating the Illinois prepaid tuition program does not guarantee that every prepaid tuition contract will qualify under Section 529 and there is no guarantee that Section 529 will continue in effect. However, Section 55 of the Illinois Prepaid Tuition Act [110 ILCS 979/55] provides that assets of the *Illinois Prepaid Tuition Trust Fund and its income and operation shall be exempt from all taxation by the State and that disbursements to a beneficiary shall be similarly exempt from all taxation by the State of Illinois and any of its subdivisions, so long as they are used for educational purposes in accordance with the provisions of an Illinois prepaid tuition contract.* Under this provision, any undistributed earnings of the Illinois Prepaid Tuition Trust which are included in a taxpayer's federal taxable income or adjusted gross income because a prepaid tuition contract does not qualify under Section 529 may be subtracted in computing the taxpayer's base income, and all disbursements included in a beneficiary's adjusted gross income may be subtracted to the extent used in accordance with the Illinois prepaid tuition contract under which the disbursements are made, regardless of whether the prepaid tuition contract qualifies under Section 529.

- h) Income not exempt from Illinois income taxation. The following types of income are not exempt from Illinois income taxation:

- 1) Income from securities commonly known as GNMA "Pass-Through Securities" and also known as GNMA "Mortgage-Backed Securities" issued by approved issuers under 12 USCA § 1721(g) and guaranteed by GNMA under 12 USCA § 1721(g) (Rockford Life Insurance Co. v. Department of Revenue, 112 Ill.2d 174, 492 N.E.2d 1278 (1986), reh. den. June 2, 1986) and income from debentures, notes, and bonds issued by the Federal National Mortgage Association including mortgage-backed bonds issued under authority of 12 USCA § 1719(d) and guaranteed by GNMA under 12 USCA § 1721(g).
- 2) Accumulated interest on Internal Revenue Service tax refunds. Illinois Department of Revenue Letter Ruling No. 86-0640, dated July 11, 1986, citing Glidden Co. v. Glander, 151 Ohio St. 344, 86 N.E. 2d 1, 9 A.L.R. 2d 515 (1949).
- 3) Income from U.S. securities acquired by a taxpayer under a repurchase agreement ("repo") with a bank or similar financial organization. The Department takes the position that, for income

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1) Heading of the Part: The Administration and Operation of the State Employees' Retirement System of Illinois

2) Code Citation: 80 Ill. Adm. Code 1540

3) Section Numbers: Proposed Action:
1540.320 Amendment
TABLE A Amendment

4) Statutory Authority: 40 ILCS 5/14-135.03

5) A Complete Description of the Subjects and Issues Involved: New actuarial assumptions were adopted for the June 30, 1997 actuarial valuation of the State Employees' Retirement System. The interest rate was changed from 8.00% to 8.50% per annum, compounded annually. The assumption for male mortality was changed from the 1986 Projected Experience Table for males to the 1983 Group Annuity Mortality Table for males with a one-year setback. Female mortality was changed from the 1986 Projected Experience Table for females to the 1983 Group Annuity Mortality Table for females.

Section 1540.320, Optional Forms of Benefits - Basis of Computation and TABLE A, Optional Forms of Benefits - Basis of Computation are being amended to reflect these new actuarial assumptions.

6) Will this rulemaking replace any emergency rulemaking currently in effect?
No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this rulemaking contain incorporations by reference? No

9) Are there any other proposed rulemakings pending on this Part? No

10) Statement of Statewide Policy Objectives: None

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments should be submitted in writing within 30 days after the proposed rules are published in the *Illinois Register* and should be directed to:

Michael L. Mory, Executive Secretary
State Employees' Retirement System of Illinois
P.O. Box 19255 - 2101 South Veterans Parkway
Springfield, Illinois 62794-9255
217-758-7444

12) Initial Regulatory Flexibility Analysis:

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A) Types of small businesses small municipalities and not for provide corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: These amendments are being filed as a result of new actuarial assumptions being adopted by the State Employees' Retirement System of Illinois.

The full text of the Proposed Amendments begins on the next page:

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1540.320 Optional Forms of Benefits - Basis of Computation
 1540.330 Board Elections
 1540.340 Excess Benefit Arrangement
 TABLE A Optional Forms of Benefits - Basis of Computation

AUTHORITY: Implementing and authorized by Article 14 of the Illinois Pension Code [40 ILCS 5/Art. 14].

SOURCE: Filed December 20, 1977, effective December 31, 1977; filed and effective February 28, 1978; emergency rule at 4 Ill. Reg. 2, page 246, effective January 1, 1980; amended at 4 Ill. Reg. 12, pages 530, 532, 534, effective March 11, 1980; emergency rule at 4 Ill. Reg. 46, page 1300, effective November 1, 1980; amended at 5 Ill. Reg. 3454, effective March 19, 1981; amended at 5 Ill. Reg. 7225, effective July 1, 1981; amended at 5 Ill. Reg. 12846, effective October 30, 1981; amended at 6 Ill. Reg. 2114, effective January 29, 1982; amended at 6 Ill. Reg. 5505, effective April 16, 1982; codified at 6 Ill. Reg. 10935; emergency amendment at 6 Ill. Reg. 11084, effective August 31, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 677, effective December 30, 1982; amended at 7 Ill. Reg. 8831, effective July 15, 1983; emergency amendment at 8 Ill. Reg. 359, effective January 1, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 4144, effective March 26, 1984; Sections 1540.280, 1540.290 and 1540.300 reclassified to 2 Ill. Adm. Code 2375 at 8 Ill. Reg. 15902; amended at 9 Ill. Reg. 12375, effective July 30, 1985; emergency amendment at 9 Ill. Reg. 19752, effective December 5, 1985, for a maximum of 150 days; amended at 10 Ill. Reg. 8889, effective May 14, 1986; amended at 11 Ill. Reg. 11155, effective June 15, 1987; amended at 14 Ill. Reg. 10498, effective June 19, 1990; amended at 15 Ill. Reg. 7379, effective April 26, 1991; amended at 16 Ill. Reg. 14407, effective September 4, 1992; amended at 20 Ill. Reg. 8033, effective June 15, 1996; emergency amendment at 21 Ill. Reg. 476, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 4992, effective April 1, 1997; emergency amendment at 21 Ill. Reg. 13187, effective September 15, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 967, effective December 22, 1997; amended at 22 Ill. Reg. 15363, effective August 10, 1998; amended at 23 Ill. Reg. _____, effective _____.

Section 1540.320 Optional Forms of Benefits - Basis of Computation

For purposes of computing optional forms of benefit provided in the Retirement Act, the interest used shall be 8.50% per annum and the mortality rate shall be 52% of the rate in Table A, column A plus 48% of the rate in Table A, column B for members and 48% of the rate in Table A, column A plus 52% of the rate in Table A, column B for surviving beneficiaries of members. For purposes of computing optional forms of benefit provided in the Retirement Act, the interest used shall be 8% per annum and the mortality rate shall be 57.340% of the rate in Table A, column A plus 42.660% of the rate in Table A, column B for members and 42.660% of the rate in Table A, column A plus 57.340% of the rate in Table A, column B for surviving beneficiaries of members.

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TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
 SUBTITLE D: RETIREMENT SYSTEMS
 CHAPTER I: STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

PART 1540

THE ADMINISTRATION AND OPERATION OF THE
 STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

Section
 1540.5 Introduction
 1540.10 Appointment of Retirement System Coordinator
 1540.20 Member's Contribution and Service Credit
 1540.30 Determination of Rate of Compensation
 1540.40 Prior Service Credit
 1540.50 Credit for Service for Which Contributions are Permitted
 1540.60 Severance of Employment - A Condition to the Payment of a Refund or Retirement Annuity
 1540.70 Death Benefits
 1540.80 Disability Claims
 1540.90 Benefit Offset
 1540.100 Birth Date Verification
 1540.110 Marriage Verification
 1540.120 Level Income Option
 1540.130 Pension Credit for Unused Sick Leave
 1540.140 Removal of Children from Care of Surviving Spouse
 1540.150 Proof of Dependency
 1540.160 Investigations of Benefit Recipients
 1540.170 Interest on Member Contributions
 1540.180 Date of Application - Retirement Annuity, Occupational and Nonoccupational and Temporary Disability Benefits, and Resignation Refund Payments
 1540.190 Lump Sum Salary Payments
 1540.200 Removal From the Payroll
 1540.210 Latest Date of Membership
 1540.220 Period for Payment and Amount of Payment of Contributions
 1540.230 Contributions By the State (Repealed)
 1540.240 Actuarially Funded Basis (Repealed)
 1540.250 Payments to Establish Credit for Service for Which Contributions are Permitted
 1540.255 Pick-up Option for Optional Service Contributions
 1540.260 Contributions and Service Credit During Nonwork Periods
 1540.270 Written Appeals and Hearings
 1540.280 Availability for Public Inspection (Recodified)
 1540.290 Procedure for Submission, Consideration and Disposition of Petitions Seeking the Promulgation, Amendment or Repeal of these Rules and Regulations (Recodified)
 1540.300 Organization of the State Employees' Retirement System (Recodified)
 1540.310 Amendments

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(Source: Amended at 23 Ill. Reg. _____, effective _____)

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Section 1540. TABLE A Optional Forms of Benefits - Basis of Computation

AGE	A	B
<u>1</u>	0.000342	0.000171
<u>2</u>	0.000342	0.000171
<u>3</u>	0.000342	0.000171
<u>4</u>	0.000342	0.000171
<u>5</u>	0.000342	0.000171
<u>6</u>	0.000342	0.000140
<u>7</u>	0.000318	0.000118
<u>8</u>	0.000302	0.000104
<u>9</u>	0.000294	0.000097
<u>10</u>	0.000292	0.000096
<u>11</u>	0.000293	0.000104
<u>12</u>	0.000298	0.000113
<u>13</u>	0.000304	0.000121
<u>14</u>	0.000310	0.000131
<u>15</u>	0.000317	0.000140
<u>16</u>	0.000325	0.000149
<u>17</u>	0.000333	0.000159
<u>18</u>	0.000343	0.000168
<u>19</u>	0.000353	0.000179
<u>20</u>	0.000365	0.000189
<u>21</u>	0.000377	0.000201
<u>22</u>	0.000392	0.000212
<u>23</u>	0.000408	0.000225
<u>24</u>	0.000424	0.000239
<u>25</u>	0.000444	0.000253
<u>26</u>	0.000464	0.000268
<u>27</u>	0.000488	0.000284
<u>28</u>	0.000513	0.000302
<u>29</u>	0.000542	0.000320
<u>30</u>	0.000572	0.000342
<u>31</u>	0.000607	0.000364
<u>32</u>	0.000645	0.000388
<u>33</u>	0.000687	0.000414
<u>34</u>	0.000734	0.000443
<u>35</u>	0.000785	0.000476
<u>36</u>	0.000860	0.000502
<u>37</u>	0.000907	0.000536
<u>38</u>	0.000966	0.000573
<u>39</u>	0.001039	0.000617
<u>40</u>	0.001128	0.000665
<u>41</u>	0.001238	0.000716
<u>42</u>	0.001370	0.000775
<u>43</u>	0.001527	0.000842
<u>44</u>	0.001715	0.000919

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF PROPOSED AMENDMENT

AGE	A	B
45	0.001932	0.001010
46	0.002183	0.001117
47	0.002471	0.001237
48	0.002790	0.001366
49	0.003138	0.001505
50	0.003513	0.001647
51	0.003909	0.001793
52	0.004324	0.001949
53	0.004755	0.002120
54	0.005200	0.002315
55	0.005660	0.002541
56	0.006131	0.002803
57	0.006618	0.003103
58	0.007139	0.003443
59	0.007719	0.003821
60	0.008384	0.004241
61	0.009158	0.004703
62	0.010064	0.005210
63	0.011133	0.005769
64	0.012391	0.006386
65	0.013868	0.007064
66	0.015592	0.007817
67	0.017579	0.008681
68	0.019804	0.009702
69	0.022229	0.010922
70	0.024817	0.012385
71	0.027530	0.014128
72	0.030354	0.016160
73	0.033370	0.018481
74	0.036680	0.021092
75	0.040388	0.023992
76	0.044597	0.027185
77	0.049388	0.030672
78	0.054758	0.034459
79	0.060678	0.038549
80	0.067125	0.042945
81	0.074070	0.047655
82	0.081484	0.052691
83	0.089320	0.058071
84	0.097525	0.063807
85	0.106047	0.069918
86	0.114836	0.076570
87	0.124170	0.083870
88	0.133870	0.091935
89	0.144073	0.101954
90	0.154859	0.111750

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF PROPOSED AMENDMENT

AGE	A	B
91	0.166307	0.123076
92	0.178214	0.135630
93	0.190460	0.149577
94	0.203007	0.165103
95	0.217904	0.182419
96	0.234086	0.201757
97	0.248436	0.222044
98	0.263954	0.243899
99	0.280803	0.268185
100	0.299154	0.295187
101	0.319185	0.325225
102	0.341086	0.358897
103	0.365052	0.395843
104	0.393102	0.438360
105	0.427255	0.487816
106	0.469531	0.545886
107	0.521945	0.614309
108	0.586518	0.694885
109	0.665268	0.789474
110	1.000000	1.000000

AGE	A	B
1	-000005	-000039
5	-000547	-000455
10	-000350	-000200
15	-000036	-000094
20	-001303	-000624
21	-001259	-000622
22	-001117	-000619
23	-001033	-000612
24	-000993	-000616
25	-000996	-000627
26	-001029	-000642
27	-001000	-000650
28	-001117	-000675
29	-001147	-000691
30	-001173	-000711
31	-001202	-000730
32	-001233	-000756
33	-001259	-000705
34	-001333	-000810

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF PROPOSED AMENDMENT

AGE	A	B
35	-001390	-000057
36	-001469	-000900
37	-001546	-000945
38	-001623	-000990
39	-001702	-001034
40	-001781	-001080
41	-001866	-001127
42	-001930	-001170
43	-002037	-001240
44	-002178	-001310
45	-002256	-001392
46	-002360	-001483
47	-002409	-001506
48	-002560	-001695
49	-002749	-001817
50	-002951	-001953
51	-003086	-002005
52	-003464	-002247
53	-006012	-002451
54	-006633	-002703
55	-007331	-003000
56	-008097	-003370
57	-008927	-003822
58	-009825	-004337
59	-010900	-004937
60	-012120	-005623
61	-013493	-006400
62	-014970	-007295
63	-016637	-008290
64	-018537	-009416
65	-020761	-010622
66	-023201	-011070
67	-026042	-013165
68	-028053	-014506
69	-031073	-016260
70	-035139	-018261
71	-038513	-020609
72	-041754	-023090
73	-045013	-025503

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF PROPOSED AMENDMENT

AGE	A	B
74	-040454	-027024
75	-052327	-029969
76	-056047	-032067
77	-062246	-034320
78	-067090	-037123
79	-073447	-040507
80	-079060	-044791
81	-084510	-049702
82	-089800	-055640
83	-095707	-062377
84	-101046	-070250
85	-100440	-079063
86	-115710	-080543
87	-123030	-090319
88	-133379	-107329
89	-144260	-115739
90	-156380	-123477
91	-160065	-130001
92	-180042	-130674
93	-190359	-148536
94	-199062	-160469
95	-200362	-175041
96	-226021	-192153
97	-224113	-210631
98	-233547	-229215
99	-243996	-249369
100	-261034	-275109
101	-283952	-306025
102	-333404	-360116
103	-374110	-400700
104	-421601	-464210
105	-460502	-517901
106	-522602	-576033
107	-565200	-612071
108	-620309	-669673
109	-717901	-753146
110	-1-000000	-1-000000

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF PROPOSED AMENDMENT

(Source: Amended at 23 Ill. Reg. _____, effective _____)

BOARD OF TRUSTEES OF EASTERN ILLINOIS UNIVERSITY

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Organization and Public Information
- 2) Code Citation: 2 Ill. Adm. Code 6000
- 3) Section Numbers: Adopted Action:
6000.110 Amended
6000.400 Amended
- 4) Statutory Authority: Section 4 of the Freedom of Information Act [5 ILCS 140/4], Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15], and Section 10-25 of the Eastern Illinois University Law [110 ILCS 665/10-25].
- 5) Effective Date of Rules: October 19, 1998
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these rules contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the Board's principal office and is available for public inspection.
- 9) Date Notice of Proposal Published in Illinois Register: This is a required rule in accordance with Section 5-15 of the Illinois Administrative Procedure Act and, therefore, has not been proposed.
- 10) Has JCAR issued a Statement of Objections to these rules? N/A
- 11) Difference(s) between proposal and final version: N/A
- 12) Have all the changes been agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? N/A
- 13) Will these rules replace Emergency rules currently in effect? No
- 14) Are there any Rules pending on this Part? No
- 15) Summary and Purpose of Rules: These rules are intended to explain what the Board of Trustees of Eastern Illinois University is, how the Board is organized, and how the public can obtain information from the Board.
- 16) Information and questions regarding these rules shall be directed to:

Lisa Huson
Office of University Counsel
Eastern Illinois University
600 Lincoln Avenue

BOARD OF TRUSTEES OF EASTERN ILLINOIS UNIVERSITY

NOTICE OF ADOPTED AMENDMENTS

109 Blair Hall
Charleston, IL 61920
217/581-7249

The full text of the Adopted Amendments begins on the next page:

BOARD OF TRUSTEES OF EASTERN ILLINOIS UNIVERSITY

NOTICE OF ADOPTED AMENDMENTS

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE F: EDUCATIONAL AGENCIES

CHAPTER XX: BOARD OF TRUSTEES OF EASTERN ILLINOIS UNIVERSITY

PART 6000

ORGANIZATION AND PUBLIC INFORMATION

SUBPART A: INTRODUCTION AND ORGANIZATION

Section	Purpose
6000.100	Board Membership
6000.110	Board Meetings
6000.120	Agenda of Board Meetings
6000.130	Minutes of Board Meetings
6000.140	Accessibility of Board Meetings
6000.150	

SUBPART B: PUBLIC INFORMATION

Section	Freedom of Information Officer
6000.200	Form and Content Requests
6000.210	Inspection and Copying of Records
6000.220	Fees
6000.230	Denial of Requests
6000.240	Response Time
6000.250	Appeals
6000.260	

SUBPART C: RULEMAKING

Section	Rulemaking
6000.300	

SUBPART D: PURCHASING RULES

Section	Access to Purchasing Rules
6000.400	Organizational Chart
APPENDIX A	

AUTHORITY: Implementing the Freedom of Information Act [5 ILCS 140/4] and the Illinois Administrative Procedure Act [5 ILCS 100/ 5-15] and authorized by the Freedom of Information Act [5 ILCS 140/3g] and by the Eastern Illinois University Law [110 ILCS 665/10-25].

SOURCE: **1995 36** 22 Ill. Reg. 9560 **06/19/1998** effective May 22, 1998; amended at 22 Ill. Reg. **1998** effective **06/19/1998**.

BOARD OF TRUSTEES OF EASTERN ILLINOIS UNIVERSITY

NOTICE OF ADOPTED AMENDMENTS

SUBPART A: INTRODUCTION AND ORGANIZATION

Section 6000.110 Board Membership

- a) The Board is the designated policy-making agency for Eastern Illinois University. The Board's purpose is to operate, manage, control, and maintain Eastern Illinois University. The Board's powers and duties are determined in accordance with the Eastern Illinois University Law [110 ILCS 665/10-25] and are set forth in its Board Regulations, which are available in the University's library, and on the University's web page.
- b) The Board is composed of seven voting members appointed by the Governor with the advice and consent of the Senate, and one voting non-voting student member, who is elected by the Student Body. Until July 1, 2001, the student member has the right to vote on all Board matters except those involving faculty tenure, faculty promotion or any issue on which the student member has a direct conflict of interest. Unless the student member is entitled to vote on a measure at a meeting of the Board or its committees, he or she shall not be considered a member for the purpose of determining whether a quorum is present at the time that measure is voted upon. Beginning on July 1, 2001, and thereafter, the student member of the Board shall be a nonvoting member.
- c) The Board elects one member to serve as Chairperson. The Chairperson presides at all Board Meetings, with the full power to vote on and discuss all matters placed before the Board. The Chairperson is also responsible for submitting information and recommendations relative to the business and interests of the University.
- d) The Board is the final institutional authority; however, it delegates primary responsibility to the President of the University for the management of the institution.

(Source: Oct 19 1998 22 Ill. Reg. 19536, effective

SUBPART D: PURCHASING RULES

Section 6000.400 Access to Purchasing Rules

The Procurement Purchasing Rules of the Chief Procurement Officer for Public Institutions of Higher Education and the Illinois Public Universities, can be found at 44 Ill. Adm. Code Part 526, adopted by emergency rule at 22 Ill. Reg. 13905, effective July 1, 1998 for Eastern Illinois University are adopted at 44 IS--ABE--525-107--JOINT-RULES-OF-THE-ILLINOIS-PUBLIC-UNIVERSITIES--PROCUREMENT AND-BIDDING-in accordance with the Illinois Purchasing Act (30--IBES--525/10-01 et--seq.).

(Source: Amended at 22 Ill. Reg. 19536, effective

BOARD OF TRUSTEES OF EASTERN ILLINOIS UNIVERSITY

NOTICE OF ADOPTED AMENDMENTS

OCT 19 1998

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Riverboat Gambling
- 2) Code Citation: 86 Ill. Adm. Code 3000
- 3) Section Numbers:
- | | |
|----------|-----------------|
| 3000.100 | Adopted Action: |
| 3000.220 | Amendment |
| 3000.222 | New |
| 3000.223 | New |
| 3000.224 | New |
| 3000.225 | New |
| 3000.236 | Amendment |
| 3000.241 | Amendment |
- 4) Statutory Authority: Riverboat Gambling Act [230 ILCS 10]
- 5) Effective Date of Amendments: October 23, 1998
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? Yes
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Board's principal office and available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: May 29, 1998; 22 Ill. Reg. 9113

- 10) Has JCAR issued a Statement of Objections to these amendments? No
- 11) Differences between proposal and final version: Several editing and technical changes of a nonsubstantive nature, primarily involving capitalization and punctuation but also changing references to "these rules" to "this Part", were made in accordance with suggestions by the Administrative Code Division and JCAR. Substantive changes indicated below were made in response to public or industry input.

In Section 3000.222(c)(1) and Section 3000.223 (d)(1) and (3), the ownership threshold is changed from "5 per cent or more" to "more than 5 per cent" to be consistent with the referenced Security and Exchange Commission Section 13D and 13G filings.

Section 3000.223(b)(4) was changed as follows: "For each Business Entity with an ownership interest, the name and position of each officer, director and all persons reporting to the chief executive officer or the board of directors of the Business Entity, and in the case of each privately held Business Entity the names of all persons with an ownership

ILLINOIS GAMING BOARD

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interest."

In Section 3000.223(c), "shareholders" is inserted after "trustees" in the first sentence. In the second sentence of Section 3000.223(c), "ultimate Parent" is changed to "intermediary entity or ultimate parent".

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will these Adopted Amendments replace Emergency Amendments currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: These amendments change the definition of "Key Persons," or those individuals and business entities who must be approved by the Gaming Board in order to be involved in riverboat gambling. The amendments are designed to focus regulatory attention on individuals and entities able to exercise substantial control or ownership of a casino owner or supplier licensed, or applying for a license, in Illinois. The rules maintain and clarify the Board's authority over other persons involved in riverboat gambling who do not fall within the Key Person definition. The Board's authority is clarified and strengthened in instances where Key Persons and shareholders are required to be disassociated from a licensee. Licensees are required to provide the Gaming Board with a Table of Organization, Ownership and Control, and Key Persons are explicitly made subject to disciplinary fines.
- 16) Information and questions regarding these Adopted Amendments shall be directed to:

Sterling M. Ryder
Deputy Chief Counsel
Illinois Gaming Board
101 West Jefferson Street
Springfield, Illinois 62702
(217)524-0226

The full text of the Adopted Amendments begins on the next page:

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 86: REVENUE
CHAPTER IV: ILLINOIS GAMING BOARDPART 3000
RIVERBOAT GAMBLING

SUBPART A: GENERAL PROVISIONS

Section	
3000.100	Definitions
3000.101	Invalidity
3000.102	Public Inquiries
3000.103	Organization of the Illinois Gaming Board
3000.104	Rulemaking Procedures
3000.105	Board Meetings
3000.110	Disciplinary Actions
3000.115	Records Retention
3000.120	Place to Submit Materials
3000.130	No Opinion or Approval of the Board
3000.140	Duty to Disclose Changes in Information
3000.141	Applicant/Licensee Disclosure of Agents
3000.150	Owner's and Supplier's Duty to Investigate
3000.155	Investigatory Proceedings
3000.160	Duty to Report Misconduct
3000.161	Communication with Other Agencies
3000.165	Participation in Games by Owners, Directors, Officers, Key Persons or Gaming Employees
3000.170	Fair Market Value of Contracts
3000.180	Weapons on Riverboat

SUBPART B: LICENSES

Section	
3000.200	Classification of Licenses
3000.210	Fees and Bonds
3000.220	Applications
3000.221	Other Required Forms
3000.222	Identification and Requirements of Key Persons
3000.223	Disclosure of Ownership and Control
3000.224	Economic Disassociation
3000.225	Business Entity and Personal Disclosure Filings
3000.230	Owner's Licenses
3000.231	Distributions
3000.234	Acquisition of Ownership Interest By Institutional Investors
3000.235	Transferability
3000.236	Owner's License Renewal
3000.240	Supplier's Licenses
3000.241	Renewal of Supplier's License

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

Section	
3000.242	Amendment to Supplier's Product List
3000.243	Bankruptcy or Change in Ownership of Supplier
3000.245	Occupational Licenses
3000.250	Transferability of Licenses
3000.260	Waiver of Requirements
3000.270	Certification and Registration of Electronic Gaming Devices
3000.271	Analysis of Questioned Electronic Gaming Devices
3000.280	Registration of All Gaming Devices
3000.281	Transfer of Registration (Repealed)
3000.282	Seizure of Gaming Devices (Repealed)
3000.283	Analysis of Questioned Electronic Gaming Devices (Repealed)
3000.284	Disposal of Gaming Devices

SUBPART C: OWNER'S INTERNAL CONTROL SYSTEM

Section	
3000.300	General Requirements - Internal Control System
3000.310	Approval of Internal Control System
3000.320	Minimum Standards for Internal Control Systems
3000.330	Review of Procedures (Repealed)
3000.340	Operating Procedures (Repealed)
3000.350	Modifications (Repealed)

SUBPART D: HEARINGS ON NOTICE OF DENIAL, RESTRICTION OF LICENSE OR
PLACEMENT ON EXCLUSION LIST

Section	
3000.400	Coverage of Subpart
3000.405	Requests for Hearings
3000.410	Appearances
3000.415	Discovery
3000.420	Motions for Summary Judgment
3000.424	Subpoena of Witnesses
3000.425	Proceedings
3000.430	Evidence
3000.431	Prohibition on Ex Parte Communication
3000.435	Sanctions and Penalties
3000.440	Transmittal of Record and Recommendation to the Board
3000.445	Status of Applicant for Licensure or Transfer Upon Filing Request for Hearing

SUBPART E: EXCURSIONS

Section	
3000.500	Time of Excursion
3000.510	Excursions During Cancelled or Disrupted Cruises; Violations and Fines

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

SUBPART F: CONDUCT OF GAMING

Section	
3000.600	Wagering Only with Approved Chips, Tokens and Electronic Cards
3000.602	Disposition of Unauthorized Winnings
3000.605	Authorized Games
3000.606	Gaming Positions
3000.610	Publication of Rules and Payout Ratio for Live Gaming Devices
3000.614	Tournaments, Enhanced Payouts and Give-aways
3000.615	Payout Percentage for Electronic Gaming Devices
3000.616	Cashing-In
3000.620	Submission of Chips for Review and Approval
3000.625	Chip Specifications
3000.630	Primary, Secondary and Reserve Sets of Gaming Chips
3000.635	Issuance and Use of Tokens for Gaming
3000.636	Distribution of Coupons for Complimentary Chips and Tokens
3000.640	Exchange of Chips and Tokens
3000.645	Receipt of Gaming Chips or Tokens from Manufacturer or Distributor
3000.650	Inventory of Chips
3000.655	Destruction of Chips and Tokens
3000.660	Minimum Standards for Electronic Gaming Devices
3000.665	Integrity of Electronic Gaming Devices
3000.666	Bill Validator Requirements
3000.670	Computer Monitoring Requirements of Electronic Gaming Devices

SUBPART G: EXCLUSION OF PERSONS

Section	
3000.700	Duty to Exclude
3000.710	Distribution and Availability of Exclusion Lists
3000.720	Criteria for Exclusion or Ejection and Placement on an Exclusion List
3000.725	Duty of Licensees
3000.730	Procedure for Entry of Names
3000.740	Petition for Removal from Exclusion List

SUBPART H: SURVEILLANCE AND SECURITY

Section	
3000.800	Required Surveillance Equipment
3000.810	Riverboat and Board Surveillance Room Requirements
3000.820	Segregated Telephone Communication
3000.830	Surveillance Logs
3000.840	Storage and Retrieval
3000.850	Dock Site Board Facility
3000.860	Maintenance and Testing

SUBPART I: LIQUOR LICENSES

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

Section	
3000.900	Liquor Control Commission
3000.910	Liquor Licenses
3000.920	Disciplinary Action
3000.930	Hours of Sale

SUBPART J: OWNERSHIP AND ACCOUNTING RECORDS AND PROCEDURES

Section	
3000.1000	Ownership Records
3000.1010	Accounting Records
3000.1020	Standard Financial and Statistical Records
3000.1030	Annual and Special Audits and Other Reporting Requirements
3000.1040	Accounting Controls Within the Cashier's Cage
3000.1050	Procedures for Exchange of Checks Submitted by Gaming Patrons and Granting Credit
3000.1060	Handling of Cash at Gaming Tables
3000.1070	Tips or Gratuities
3000.1071	Admission Tax and Wagering Tax
3000.1072	Cash Reserve Requirements

SUBPART K: SEIZURE AND DISCIPLINARY HEARINGS

Section	
3000.1100	Coverage of Subpart
3000.1105	Duty to Maintain Suitability
3000.1110	Board Action Against License or Licensee
3000.1115	Complaint
3000.1120	Appearances
3000.1125	Answer
3000.1126	Appointment of Hearing Officer
3000.1130	Discovery
3000.1135	Motions for Summary Disposition
3000.1139	Subpoena of Witnesses
3000.1140	Proceedings
3000.1145	Evidence
3000.1146	Prohibition of Ex Parte Communication
3000.1150	Sanctions and Penalties
3000.1155	Transmittal of Record and Recommendation to the Board

AUTHORITY: Implementing and authorized by the Riverboat Gambling Act [230 ILCS 10].

SOURCE: Emergency rule adopted at 15 Ill. Reg. 11252, effective August 5, 1991, for a maximum of 150 days; adopted at 15 Ill. Reg. 18263, effective December 10, 1991; amended at 16 Ill. Reg. 13310, effective August 17, 1992; amended at 17 Ill. Reg. 11510, effective July 9, 1993; amended at 20 Ill. Reg. 5814, effective April 9, 1996; amended at 20 Ill. Reg. 6280, effective April 10, 1996.

ILLINOIS GAMING BOARD

NOTICE OF ADOPTED AMENDMENTS

22, 1996; emergency amendment at 20 Ill. Reg. 8051, effective June 3, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 14765, effective October 31, 1996; amended at 21 Ill. Reg. 4642, effective April 1, 1997; emergency amendment at 21 Ill. Reg. 14566, effective October 22, 1997, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 978, effective December 29, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 4390, effective February 20, 1998; amended at 22 Ill. Reg. 10449, effective May 27, 1998; amended at 22 Ill. Reg. 17324, effective September 21, 1998; amended at 22 Ill. Reg. **19541**, effective **OCT 23 1998**.

SUBPART A: GENERAL PROVISIONS

Section 3000.100 Definitions

For purposes of this Part these--Rates the following terms shall have the following meanings:

"Act": The Riverboat Gambling Act. [230 ILCS 10]

"Affiliate": An "Affiliate of", or person "Affiliated with", a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person.

"Alcoholic Liquors": Includes alcohol, spirits, wine and beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, and capable of being consumed as a beverage by a human being.

"Attributed Interest": A direct or indirect interest in a Business Entity deemed to be held by a person not through the person's actual holdings but either through the holdings of the person's relatives or through a third party or parties on behalf of the person pursuant to a plan, arrangement or agreement.

"Bill Validator": Any electro-mechanical device attached either on or into an Electronic Gaming Device which accepts and analyzes the legitimacy of United States currency, validates the currency, stores the currency, and issues Electronic Credits equal to the value of currency inserted into the device.

"Board": The Illinois Gaming Board.

"Business Entity": A partnership, incorporated or unincorporated association or group, firm, corporation, limited liability company, partnership for shares, trust, sole proprietorship or other business enterprise.

ILLINOIS GAMING BOARD

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"Chip": A non-metal or partly metal representative of value, redeemable for cash, and issued and sold by a holder of an Owner's license to use in gaming other than in Electronic Gaming Devices on such holder's Riverboat or Riverboats.

"Chip Float": The difference between the total face value of Chips received from vendors and the total face value of Chips accounted for through an inventory conducted by the Riverboat Gaming Operation.

"Dependent": Any individual who received over half of his support in a calendar year from any other individual.

"Electronic Card": A card purchased from a holder of an Owner's license for use on that holder's Riverboat Gaming Operation as a substitute for Tokens in the conduct of gaming on an Electronic Gaming Device.

"Electronic Credit": A value owed to a patron on an Electronic Gaming Device.

"Electronic Gaming Device": Includes as approved Games under Section 3000.605 Single-Position Reel-Type, Single-Position Single-Game Video and Single-Position Multi-Game Video Electronic Gaming Devices.

"Electronic Gaming Device Drop": The total face value of Tokens or representations of Tokens (including without limitation foreign Tokens and slugs) collected from the drop bucket and United States currency collected from the Bill Validator drop box.

"Electronic Gaming Device Win": The Electronic Gaming Device Drop minus hand-paid Jackpots minus hopper fills.

"EPROM": An acronym for Erasable, Programmable, Read Only Memory, which is a microprocessor component that stores memory and affects payout percentage and/or contains a random number generator that selects the outcome of a Game on an Electronic Gaming Device.

"Excluded Person": Any person whose name appears on any Exclusion List, or any person whose name does not appear on an Exclusion List but who is excluded or ejected pursuant to Section 5(c)(12) of the Act or as a result of meeting one or more of the criteria in Section 3000.720 of this Part these-rates.

"Exclusion List": A list or lists which contain the identities of persons who are to be excluded or ejected from any licensed Gaming operation in any jurisdiction. The list may include any person whose reputation or conduct is such that his presence within a Riverboat Gaming Operation may, in the opinion of the Board or the

ILLINOIS GAMING BOARD

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Administrator, call into question the honesty or integrity of the Gaming operation or pose a threat to the interests of the State of Illinois.

"Game": A gambling activity which is played for money, property, or anything of value, including without limitation those played with cards, Chips, Tokens, dice, implements, or electronic, electrical, or mechanical devices or machines.

"Gaming": The dealing, operating, carrying on, conducting, maintaining or exposing for play of any Game.

"Gaming Equipment/Supplies": A machine, mechanism, device, or implement which is integral to the operation of a Game or affects the result of a Game by determining win or loss, including without limitation: electronic, electrical, or mechanical devices or machines; cards or dice; layouts for Live Gaming Devices; any representative of value used with any Game, including without limitation Chips, Tokens, or Electronic Cards; and hardware and software related to any item described herein.

"Gaming Operations Manager": A person or business entity other than the holder of an Owner's license who has the ultimate responsibility to manage, direct or administer the conducting of Gaming.

"Hand": Either one Game in a series, one deal in a card Game, or the cards held by a player.

"Indirect Interest": An interest in a Business Entity that is deemed to be held by the holder of an Owner's license not through the holder's actual holdings in the business entity but through the holder's holdings in other business entities.

"Institutional Investor": A "qualified institutional buyer" as defined by Securities and Exchange Commission Rule 144A (17 CFR 230.144A) under the Securities Act of 1933, as amended.

"Internal Control System": Proprietary internal procedures and administration and accounting controls designed by the holder of an Owner's license for the purpose of exercising control over the Riverboat Gaming Operation.

"Junketeer": A person or entity that facilitates a patron's participation in gaming at a Riverboat Gaming Operation and is compensated, not as an employee but as an independent contractor, by that Operation based upon how much the patron actually wagers or loses.

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"Key Person": A Person identified by the Board under Section 3000.222 as subject to regulatory approval as a Person able to control, or exercise significant influence over, the management, assets, or operating policies of an owner or supplier licensee. For a publicly held Business Entity subject to the Act, "Key Person" shall mean an officer, director, trustee, partner, managing agent, holder of any direct or beneficial ownership interest of a licensee or other entity identified by the Board as a person able to control or exercise significant influence over the management or operating policies of a licensee or other entity subject to the Act.

For other than a publicly held Business Entity subject to the Act, "Key Person" shall mean an officer, director, trustee, partner, managing agent, holder of any direct or indirect or beneficial ownership interest of a licensee or other entity subject to the Act; and any person identified by the Board as a person able to control or exercise significant influence over the management or operating policies of a licensee or other entity subject to the Act.

"Live Gaming Device": Any apparatus, other than an Electronic Gaming Device, upon which Gaming is conducted or which determines an outcome which is the object of a wager. This definition includes but is not limited to roulette wheels, keno machines, punchboard tickets and tables with layouts utilized in Games approved by the Board.

"Marketing Agent": A person or entity, other than a junketeer or an employee of a Riverboat Gaming Operation, who is compensated by the Riverboat Gaming Operation in excess of \$100 per patron per trip for identifying and recruiting patrons.

"Non-Value Chip": A Chip, clearly and permanently impressed, engraved or imprinted with the name of the Riverboat Gaming Operation, but bearing no value designation.

"Notice of Board Action": A Notice of Denial, Restriction, Suspension, Revocation, Nonrenewal, Fine, Exclusion or other action issued by the Board.

"Parent Company": A "parent company" of a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

"Payout": Winnings earned on a wager.

"Person": "Person" includes both individuals and Business Entities.

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"Petitioner": An applicant, licensee, or Excluded Person who requests a hearing upon issuance of a Notice of Board Action.

"Progressive Controller": The hardware and software that controls all communications among the machines within a progressive Electronic Gaming Device link and its associated progressive meter.

"Progressive Jackpot": An award for winning play in a Game, the value of which is determined by the contribution of a portion of each Wager placed into play or the combined amount of several wagers linked to a common jackpot award.

"Relative": Spouse, parents, grandparents, children, siblings, uncles, aunts, nephews, nieces, fathers-in-law, mothers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law, whether by the whole or half blood, by marriage, adoption or natural relationship, and Dependents.

"Riverboat Gaming Operation": The owner licensee, Gaming Operations Manager, or, as the context requires, the conducting of Gaming and all related activities, including without limitation the purveying of food, beverages, retail goods and services, and transportation, on a Riverboat and at its Support Facilities.

"Signature": The definitive identity of an individual specific EPROM chip, determined by electronic analysis and reflective of the EPROM chip's game behavior capability.

"Substantial Owner": A person who has an ownership interest of 25% or more in a Business Entity.

"Supplier": Either a Gaming Operations Manager or a provider of Gaming Equipment, Gaming Equipment maintenance or repair services, security services or lessor of a Riverboat or dock facilities or a provider of any goods or services where payment is calculated by a percentage of a Riverboat Gaming Operation's revenues.

"Support Facility": A place of business which is part of, or operates in conjunction with, a Riverboat Gaming Operation and is owned in whole or in part by a holder of an Owner's or Supplier's license or any of their Key Persons, including without limitation Riverboats, offices, docking facilities, parking facilities, and land-based hotels or restaurants.

"Table Drop": The total amount of cash or cash equivalents contained in the drop box for Chips purchased at a Live Gaming Device.

"Table Win": The dollar amount won by the holder of an Owner's

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license through play at a live Game which is the total of the Table Drop plus ending Chip inventory plus credits minus opening Chip inventory minus fills.

"Theoretical Payout Percentage": The percentage of Tokens wagered which will be returned to players by an Electronic Gaming Device.

"Token": A metal representative of value, redeemable for cash only at the issuing Riverboat Gaming Operation, and issued and sold by a holder of an Owner's license for use in Gaming.

"Token Dispenser": Any mechanical or electrical device designed for the purpose of dispensing an amount of Tokens equal to the amount of currency inserted into the device.

"Token Float": The difference between the total face value of Tokens received from vendors and the total face value of Tokens accounted for through an inventory conducted by the Riverboat Gaming Operation.

"Value Chip": A Chip, clearly and permanently impressed, engraved or imprinted with the name of the Riverboat Gaming Operation and the specific value of the Chip.

"Wager": A sum of money or thing of value risked.

(Source: Amended at 22 Ill. Reg. **19541**, effective

OCT 23 1993)

SUBPART B: LICENSES

Section 3000.220 Applications

a) Application Forms. Application forms shall be submitted by applicants as provided in this Section.

1) Owner's License. Owner's License Application Form and Business Entity Form or Personal Disclosure Form 1 for each of the applicant's Key Persons, or any other principal or investor as the Board may require.

2) Supplier's License. Supplier's License Application Form and Business Entity Form or Personal Disclosure Form 1 for each of the applicant's Key Persons, or any other principal or investor as the Board may require.

3) Occupation License, Level 1. Personal Disclosure Form 1. After the first year of license, applications for continuous renewal of Level 1 Occupational Licenses may include, in lieu of the Personal Disclosure Form 1, a disclosure affidavit, updated personal and background information, and updated tax and financial documents and information. The disclosure affidavit

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shall update and attest to the veracity of all required information.

- 4) Occupation License, Level 2. Personal Disclosure Form 2.
- 5) Occupation License, Level 3. Personal Disclosure Form 3.
- b) Additional or Different Forms or Materials. An applicant may be required to submit forms or materials in addition to those listed in subsection (a).

c) Application Procedures.

- 1) An applicant is seeking a privilege and assumes and accepts any and all risk of adverse publicity, notoriety, embarrassment, criticism or other action, or financial loss which may occur in connection with the application process.
 - 2) Any misrepresentation or omission made with respect to an application may be grounds for denial of the application.
 - 3) Application forms and requested materials shall be submitted in triplicate. Application forms and requested materials for Owner's and Supplier's licenses shall be submitted in bound form.
 - 4) Applicants for Occupation licenses shall be photographed and fingerprinted at the time of application at a place designated by the Administrator.
 - 5) An application shall be deemed filed when the completed application form, including all required documents and materials, and the application fee have been submitted.
- d) Amendments and Incorporation by Reference.
- 1) An application may be amended only upon leave of the Board.
 - 2) The Board may allow information, documents, or other materials submitted by an applicant to be incorporated by reference into a subsequent application.
- e) Withdrawal of Applications.
- 1) An Owner's or Supplier's application may be withdrawn only upon leave of the Board.
 - A) A request for leave to withdraw an application for an Owner's license shall not be considered by the Board unless received prior to Board action regarding a finding of preliminary suitability under Section 3000.230(c) 300-230(c). However, applicants who have been found preliminarily suitable may seek leave to withdraw after such finding.
 - B) A request for leave to withdraw an application for a Supplier's license shall not be considered by the Board unless received prior to Board action on licensure under Section 3000.240.
 - C) The Board may deny leave to withdraw an Owner's or Supplier's application if it determines that withdrawal of the application would not be in the best interests of the public and the Gaming industry.

- 2) If an application for an Owner's or Supplier's license is withdrawn, the applicant may not reapply for a license within one

year from the date withdrawal is granted, without leave of the Board.

- 3) Applications for Occupational licenses may be withdrawn without leave of the Board, if written notification of withdrawal is received prior to Board action on licensure under Section 3000.245 and unless the intended withdrawal is objected to by the Administrator in which case leave of the Board is required.

(Source: Amended 22 Ill. Reg. 19541, effective OCT 23 1988)

Section 3000.222 Identification and Requirements of Key Persons

- a) The Board shall certify for each applicant for or holder of an Owner's or Supplier's license each position, individual or Business Entity that is to be approved by the Board and maintain suitability as a Key Person of the licensee.
- b) Supplier Key Persons. With respect to an applicant for or holder of a Supplier's license, Key Person shall include:
 - 1) The Chief Executive Officer and the Chief Operating Officer, or their functional equivalents, and each individual or Business Entity that is a Substantial Owner.
 - 2) Each individual or Business Entity that is a Substantial Owner of any Business Entity that is a Substantial Owner of the Illinois applicant or licensee.
 - 3) All other individuals or Business Entities that, upon review of the applicant's or licensee's Table of Organization, Ownership and Control submitted under Section 3000.223, the Board determines hold a position or a level of ownership, control or influence that is material to the regulatory concerns and obligations of the Board for the specified licensee or applicant.
- c) Owner Licensee Key Persons. With respect to an applicant for or the holder of an Owner's license, Key Person shall include:
 - 1) Any Business Entity and any individual with an ownership interest or voting rights of more than 5 percent in the licensee or applicant, and the trustee of any trust holding such ownership interest or voting rights.
 - 2) The directors of the licensee or applicant and its chief executive officer, president and chief operating officer, or their functional equivalents.
 - 3) All other individuals or Business Entities that, upon review of the applicant's or licensee's Table of Organization, Ownership and Control submitted under Section 3000.223, the Board determines hold a position or a level of ownership, control or influence that is material to the regulatory concerns and obligations of the Board for the specified licensee or applicant.
- d) Level 1 Occupational Licensees. Individuals required to apply for and hold a Level 1 Occupational License, pursuant to Section 3000.200(c),

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may also be certified by the Board as Key Persons. For such individuals, the disclosure and approval requirements and the standards for compliance with this Part shall be those related to occupational licensure.

1) An individual denied occupational licensure or whose license is revoked by a final determination of the Board is unsuitable and shall not be allowed to function as a Key Person of any applicant or licensee.

2) An individual who, by voluntary action, relinquishes status as a Level 1 Occupational Licensee and remains or becomes a Key Person shall be required to comply with all requirements imposed by the Board and this Part upon Key Persons.

e) Each individual or Business Entity designated as a Key Person shall:

1) File a Business Entity Form or Personal Disclosure Form 1 or its equivalent.

2) File, on an annual basis, a disclosure affidavit, updated personal and background information, and updated tax and financial documents and information.

3) Comply with the applicable provisions of this Part and disclose promptly to the Board any material changes in status or information previously provided to the Board.

4) As required, cooperate fully with any investigation conducted by the Board.

5) Maintain suitability as a Key Person.

6) Be subject to a fine for each act or omission that is grounds for discipline of a licensee under the provisions of Section 3000.110.

(Source: Added at 22 Ill. Reg. 19541, effective OCT 23 1998)

Section 3000.223 Disclosure of Ownership and Control

a) General Requirements. Each applicant for or holder of an Owner's or Supplier's license shall provide to the Board and maintain on a current basis a Table of Organization, Ownership and Control. The Table of Organization, Ownership and Control shall contain the information required by this Section, in sufficient detail to identify the hierarchy of individuals and Business Entities that, through direct or indirect means, manage, own or control the interests and assets of the applicant or license holder.

b) Direct Ownership or Control. The Table of Organization, Ownership and Control shall identify the following information concerning the direct management, ownership and control of the applicant or license holder.

1) The name and percentage of ownership of each individual or Business Entity with an ownership interest in the applicant or licensee. If the licensee or applicant is a Business Entity whose stock is traded publicly, the identification of ownership

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2) shall be provided as required in subsection (d). A table of organization reflecting the management and governance structure of the licensee or applicant, including the name and office or position of each individual serving as an officer, director or member of an executive committee or similar governing body and identifying each managerial position and each managerial employee reporting directly to an officer of the company or its board of directors.

3) For each trust holding ownership interest, and for each voting trust, the name of the trustee of the trust.

4) For each Business Entity with an ownership interest, the name and position of each officer, director and all persons reporting to the chief executive officer or the board of directors of the Business Entity, and in the case of each privately held Business Entity the names of all persons with an ownership interest.

c) Intermediary Entities and Ultimate Ownership. To the extent that ownership of or control over the applicant or licensed entity is exercised through intermediary Business Entities, the Table of Organization, Ownership and Control must identify, in hierarchical fashion, all such intermediary entities and their officers, directors, trustees, shareholders and persons reporting to the chief executive officer or board of directors, and provide similar information on any parent Business Entity. If the intermediary entity or ultimate parent is a publicly traded company, the ownership identification requirements for this Business Entity shall be provided as required in subsection (d).

d) Publicly Traded Company Ownership. If a Business Entity identified in subsection (b) or (c) is a publicly traded company, the following information shall be provided in the Table of Organization, Ownership and Control:

1) The name and percentage of ownership interest of each individual or Business Entity with ownership of more than 5 percent of the voting shares of the entity, to the extent such information is known or contained in 13D or 13G Securities and Exchange Commission filings.

2) To the extent known, the names and percentage of interest of ownership of persons who are relatives of one another and who together (as individuals or through trusts) exercise control over or own more than 10 percent of the voting shares of the entity.

3) Any trust holding a more than 5 percent ownership or voting interest in the company, to the extent such information is known or contained in 13D or 13G Securities and Exchange Commission filings.

e) The information contained in the Table of Organization, Ownership and Control provided to the Board may be disclosed under the Freedom of Information Act unless otherwise exempt by law or Board rule.

(Source: Added at 22 Ill. Reg. 19541, effective

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OCT 23 1998**Section 3000.24 Economic Disassociation**

- a) Each owner and supplier licensee shall provide a means for the economic disassociation of a Key Person in the event such economic disassociation is required by an order of the Board.
- b) Based upon findings from an investigation into the character, reputation, experience, associations, business probity and financial integrity of a Key Person, the Board may enter an order upon the licensee to require the economic disassociation of such Key Person. A violation of an order of the Board for the economic disassociation of a Key Person may result in a complaint under Subpart K. Any hearing concerning such complaint shall be a hearing on the merits of the Board's determination that economic disassociation is warranted. The licensee shall be considered the party to such hearing.

(Source: Added at 22 Ill. Reg. **19541**, effective**OCT 23 1998**)**Section 3000.225 Business Entity and Personal Disclosure Filings**

- a) In order to conduct required investigations into the background, character, reputation, business probity, and financial integrity of certain individuals and Business Entities associated with applicants or licensees, the Board requires the filing of the Business Entity Form or Personal Disclosure Form 1 and related information as well as the filing of periodic supplements to this disclosure information. Comprehensive information is required of:

- 1) Each Key Person.
 - 2) Individuals required to hold a Level 1 Occupational License.
- b) The Business Entity Form, Personal Disclosure Form 1, or other specified disclosure information, upon an order of the Board may be required of:
- 1) Any individual or Business Entity holding or represented as holding an option or other claim of or benefit from ownership interest in an applicant or licensee and any shareholder of the applicant or licensee not otherwise designated as a Key Person.
 - 2) Any individual that controls an applicant or licensee or that is controlled by a Key Person of an applicant or licensee whom the Board determines holds a sensitive position or relationship affecting the integrity of Gaming in Illinois.
 - 3) An individual or Business Entity that provides, through a private transaction, substantial capital for the benefit of an applicant or licensee.
 - 4) Any individual that, through an ownership or voting trust, controls an ownership interest in an applicant or licensee.
- c) Personal disclosure information shall be considered confidential

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information, except as provided by law or this Part.

- d) The obligation to file a Business Entity Form or Personal Disclosure Form 1 and other information is a mutual obligation of the Person required to file and the owner or supplier licensee or applicant with whom the Person is affiliated.

(Source: Added at 22 Ill. Reg. **19541**, effective **OCT 23 1998**)**Section 3000.236 Owner's License Renewal**

Upon the expiration of an initial Owner's license license, or following a one year license renewal period, a license may be renewed for a one year period subject to the provisions of the Act and this Section 3000.236.

- a) The renewal requirements shall include the following:

- 1) Beginning with the initial renewal application the licensee shall submit an owner's renewal application and the requisite Business Entity and Personal Disclosure Forms. The owner licensee shall may submit disclosure information pursuant to Section 3000.222(e)(2) affidavits from each Key Person who has previously filed person--who-would-otherwise-be-required-to-file a Business Entity or Personal Disclosure Form, updating, and attesting to the veracity of information on the his-or-her previously filed Business Entity or Personal Disclosure Form and setting forth any required additional or different information than previously submitted. Nothing in this Section shall be interpreted to alter the ongoing duty to disclose changes in information;
- 2) Unless a later date is authorized in writing by the Administrator, materials submitted pursuant to this Section shall be provided in triplicate at least ninety days prior to the expiration of the Owner's license license, and must be accompanied by the required annual licensing fee; and
- 3) As part of its renewal submission, the licensee shall provide documentation of the following:
 - A) Measures taken by the licensee to assure compliance with the Act and the rules promulgated thereunder;
 - B) Adherence to the economic development purposes and requirements of the Act, including conformance to specific commitments made in conjunction with an initial application or subsequent renewal applications;
 - C) Adherence to specific conditions or requirements adopted by the Board at the time a previous renewal was authorized;
 - D) Ability to maintain a financially viable gaming entity;
 - E) Any specific plans for changes in the financing, ownership or structure of the licensee and its substantial owner(s);
 - F) An assessment of the economic impact of the gaming operation on employment, business and economic development related to the State of Illinois and related to the area of the State

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in which the gaming operation is conducted;

- G) Information relating to the licensee's or its substantial owners' involvement in gaming in other jurisdictions;
- H) Verification of tax filings with the Illinois Department of Revenue during the preceding licensing period;
- I) Summary of all litigation to which licensee is or was a party during the preceding licensing period;
- J) Responses to specific questions or concerns raised by the Board in its renewal investigation and review process; and
- K) Evidence of continued support of the licensee from its community.

b) The Board shall base its renewal of an Owner's license upon:

- 1) The timeliness and responsiveness of the information submitted by the holder of a license as required pursuant to Section 3000.236;
- 2) The Board's analysis of the owner licensee's gaming operations, including the nature, frequency, extent and any pattern of past violations of the Act and this Part the-rules-promulgated-thereunder;
- 3) The financial status and the current and projected financial viability of the entity;
- 4) Information on the background, character and integrity of the Key Persons, owners, directors and partners of the entity;
- 5) The owner licensee's pattern of compliance exhibited through quarterly, special and annual compliance reviews or audits performed by the Board staff or contract audit firms;
- 6) The licensee's commitment to economic development in the community and in Illinois;
- 7) The overall adherence of the licensee to all requirements of the Act and this Part the-rules-promulgated-thereunder; and
- 8) Any other information the Board deems appropriate.

c) Action of the Board

- 1) The Board shall act at a public meeting on the renewal of an Owner's license and may afford representatives of the licensee and members of the general public an opportunity for commenting upon the renewal.
- 2) If the Board decides to deny license renewal, it shall direct the Administrator to issue a Notice of Denial to the licensee by certified mail or personal delivery.

d) Request for Hearing

- 1) An owner licensee served with a Notice of Denial may request a hearing in accordance with Section 3000.405.
- 2) If a hearing is not requested, the Notice of Denial becomes the final order of the Board denying the owner licensee's application for renewal.

(Source: Amended at 22 Ill. Reg. effective
OCT 23 1993)

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Section 3000.241 Renewal of Supplier's License

a) Renewal Requirements

Except as provided in subsection (d), upon the expiration of an initial Supplier's license issued pursuant to Section 3000.240, the license may be renewed subject to the provisions of the Act and this Section 3000.241 for a licensure period of four years. The renewal requirements shall include, but not be limited to, the following:

- 1) Every fourth year following the initial licensing, the licensee shall provide documentation of the following in lieu of a renewal application:

- A) A written statement requesting renewal of the Supplier's license;
- B) A written statement verifying past compliance with the annual disclosure affidavit required under Section 3000.240(h)(2)(A);
- C) Measures taken by the licensee to assure compliance with the Act and this Part the-rules-promulgated-thereunder; and
- D) Responses to specific questions or concerns raised by the Board in its relicensure investigation and review process.

- 2) In addition to the information submitted by the licensee pursuant to subsection (a)(1), Key Persons of the licensee who have previously filed Business Entity or Personal Disclosure Forms shall submit disclosure information pursuant to Section 3000.222(e)(2), updating, and affidavits attesting to the veracity of, all previously submitted materials and setting forth any required additional or different information which---is different from that which has been previously submitted.

- 3) Materials submitted pursuant to this Section shall be provided at least sixty days prior to the renewal date, and must be accompanied by the required annual licensing fee.

- 4) Nothing in this Section shall be interpreted to alter the duty to comply with the annual disclosure and fee requirements as set forth in Section 3000.240 or to disclose changes in information as set forth in Section 3000.140.

b) Board Decision

The Board shall base its renewal of a Supplier's license upon:

- 1) The timeliness and responsiveness of the information submitted by the licensee as required pursuant to this Section 3000.241;
- 2) The background, reputation, character and integrity of the Key Persons;
- 3) The licensee's continuing ability to maintain the quality of its products or services;
- 4) The overall adherence of the licensee to all requirements of the Act and this Part the-rules-promulgated-thereunder; and
- 5) Any other information the Board deems appropriate and necessary to maintain public confidence in the credibility and integrity of

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Board.

(Source: Amended at 22 Ill. Reg. 19541, effective
Oct 23 1998)

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- gambling operations, as required by Section 2(b) of the Act.
- c) Term of Renewed Licenses
Unless otherwise restricted pursuant to subsection (d) of this Section, renewed licenses shall be issued for a term of four years.
- d) Licenses Restricted on Renewal
1) Upon issuing a renewal license, the Board may restrict the term of or impose conditions upon a license.
2) A restricted license may be issued on renewal in the event the Board has concerns regarding:
A) The nature or quality of a product provided by the licensee in Illinois;
B) The business experience or background of the licensee's Key Persons;
C) The business practices in Illinois and other jurisdictions of the licensee, its Key Persons or any person who directly or indirectly controls the licensee;
D) The licensee's reputation;
E) The licensee's failure to comply with the Act and this Part.
- 3) The term of a license restricted on renewal shall be for one year from the date of issuance.
- 4) If, at the conclusion of the one year period for licenses restricted on renewal, the Board deems that the licensee has addressed and rectified the Board's concerns, the Board may issue a four year renewal license.
- 5) Failure of the licensee to properly address and rectify the Board's concerns within a one year period may result in the issuance of another license restricted on renewal, the non-renewal of the license or disciplinary action authorized under Section 5 of the Act.
- e) Action of the Board
1) The Board shall act at a public meeting on the renewal of a Supplier's license license.
2) If the Board decides to deny license renewal, it shall direct the Administrator to issue a Notice of Denial to the supplier Supplier licensee by certified mail or personal delivery.
3) If the Board decides to issue a restricted license on renewal, it shall direct the Administrator to issue a Notice of Restricted License by certified mail or personal delivery. Such Notice shall specify the reasons for a restricted license.
- f) Request for Hearing
1) A supplier licensee served with a Notice of Denial may request a hearing in accordance with Section 3000.405.
2) A supplier licensee served with a Notice of Restricted License on Renewal may request a hearing in accordance with Section 3000.405.
3) If a hearing is not requested, the Notice of Denial or Notice of Restricted License on Renewal becomes the final order of the

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- 1) Heading of the Part: Program Description
- 2) Code Citation: 89 Ill. Adm. Code 676
- 3) Section Numbers: 676.30
Adopted Action: Amended
- 4) Statutory Authority: Implementing Section 3 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3].
- 5) Effective Date of Amendments: October 23, 1998
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: May 8, 1998, 22 Ill. Reg. 7827
- 10) Has JCAR Issued a Statement of Objections to these amendments? No
- 11) Difference(s) between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this rule replace an Emergency Rule currently in effect? No
- 14) Are there any amendments pending on this Part: No

15) Summary and Purpose of Amendments: The Department of Human Services is amending Section 676.30(q) to increase the circumstances under which the customer's Personal Assistant (P.A.) services can be provided. This amendment revises the definition of Personal Assistant to reflect the provision of P.A. services out of the home. The amendments eliminate instances where the rules limited the activities the customer could undertake by not allowing services provided in these circumstances to be reimbursed by DHS - Home Services Program (HSP). Specifically, this amendment will allow the services the Personal Assistant (P.A.) Service provides to the customer while he/she is at work, traveling outside the home and, for persons with the most severe disabilities, while he/she is hospitalized. This revision removes any disincentives to employment by allowing the P.A. to provide personal care while the eligible customer is at work. The amendment also increases the individual's freedoms by

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allowing P.A. service included in the Service Plan to be provided when the customer travels away from the home. This will allow customers to travel to conventions, for vacations, and for work and to continue to receive the personal care services described in the HSP service plan.

- 16) Information and answers to questions regarding this adopted rule shall be directed to:

Ms. Susan Weir, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
3rd Floor, Harris Bldg.
Springfield, Illinois 62762
(217) 785-9772
Fax: (217) 557-1547

The full text of Adopted Amendments begins on the next page:

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TITLE 89: SOCIAL SERVICES
 CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
 SUBCHAPTER d: HOME SERVICES PROGRAM

PART 676

PROGRAM DESCRIPTION

SUBPART A: GENERAL PROGRAM PROVISIONS

Section

676.10 Program Purpose and Types
 676.10 General Program Accessibility
 676.30 Definitions
 676.40 Service Description

SUBPART B: CASE MANAGEMENT

Section

676.100 Case Files
 676.110 Sharing of Customer Information Between HSP and Other DHS Programs
 676.120 Documentation of Information
 676.130 Required Customer Signatures and Information
 676.140 Application by DHS Employees, Individuals Holding Contracts with DHS, DHS Advisory Council Members, Family Members of DHS Employees, or Close Friends of DHS Employees
 676.150 Geographic Case Assignment

SUBPART C: VENDOR PAYMENT

Section

676.200 Vendor Payment
 676.210 Reporting and Collection of Misspent Funds

SUBPART D: REFERRAL TO DEPARTMENT ON AGING (DOA)

Section

676.300 Criteria for Referral to DoA
 676.310 Disposition of Cases not Appropriate for Referral to DoA

AUTHORITY: Implementing Section 3 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3].

SOURCE: Adopted at 19 Ill. Reg. 5095, effective March 21, 1995; amended at 20 Ill. Reg. 6315, effective April 18, 1996; amended at 21 Ill. Reg. 2678, effective February 7, 1997; recodified from the Department of Rehabilitation Services to the Department of Human Services at 21 Ill. Reg. 9325; amended at 22 Ill. Reg. 19565, effective 06/23/98.

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SUBPART A: GENERAL PROGRAM PROVISIONS

Section 676.30 Definitions

For the purposes of this Subchapter, unless otherwise stated, the following terms shall have the following meanings.

- a) Activities of Daily Living (ADLs) - those tasks an individual must do, or which an individual must have provided for him/her, in order to prevent institutionalization (i.e., bathing, dressing, shopping, cooking, housekeeping, etc.).
- b) Customer - anyone who:
 - 1) has been referred to HSP for a determination of eligibility for services;
 - 2) has applied for services through HSP;
 - 3) is receiving services through HSP;
 - 4) has received services through HSP; or
 - 5) is a parent, family member, guardian, or duly authorized representative of the individual, as appropriate.
- c) Counselor - for the purposes of this Subchapter, the term counselor shall mean the DHS' staff person in the local DHS office who has the responsibility for the day-to-day management of the HSP case and Case Managers for the AIDS Medicaid Waiver Program.
- d) Determination of Need (DON) - the assessment tool used to determine an individual's non-financial eligibility for HSP services based on the individual's impairment and need for care. This form measures the level of risk of institutionalization for the individual.
- e) DHS - Illinois Department of Human Services.
- f) DPA - Illinois Department of Public Aid.
- g) Family - any one related by blood, marriage, or adoption to the individual seeking services through HSP or anyone with whom the individual has a close inter-personal relationship and who resides with the individual.
- h) Family Unit - for the purposes of determining financial eligibility, the number of persons derived when counting the individual seeking services through HSP and the number of persons in the household who are legally responsible for the individual seeking services and for whom the individual seeking services is legally responsible.
- i) HCFA - the federal Health Care Financing Administration.
- j) HSP - the Home Services Program.
- k) Home - a private residence where the customer lives which is not an intermediate care or skilled nursing facility as defined at 77 Ill. Adm. Code 300, or a residential program operated by, or for which funding is provided by, DHS as defined at 59 Ill. Adm. Code 120. For the purpose of this Subchapter, the term "home" shall include domestic violence shelters as defined in Section 1(c) of the Domestic Violence Shelter Act [20 ILCS 2210/1(c)].
- l) Intermediate Care Facility (ICF) - a nursing facility that provides regular health related care to its residents, as well as those

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- services necessary for safe and adequate living.
- m) Individual - the specific person to whom services are provided through HSP.
 - n) Legally Responsible Family Member - a spouse, parent of a child who is 20 years of age or under, or a legal guardian of an individual who is under age 18.
 - o) Medicaid - the Medicaid program administered by DPA under the Public Aid Code [305 ILCS 5/11].
 - p) Medicaid Waiver - the waiver allowing HSP to claim federal reimbursement for approved levels of in-home care for individuals who would otherwise be placed in institutions for such care. The Medicaid Waiver is overseen at the federal level by HCFA.
 - q) Personal Assistant (PA) - an individual employed by the customer to provide through HSP varied services that have been approved by the customer's physician in-the-customer's-home-through-HSP.
 - r) Physician - a licensed doctor of medicine (M.D.) or doctor of Osteopathy (D.O.) licensed pursuant to the Medical Practice Act [225 ILCS 60].
 - s) Prescreening - an assessment to determine an individual's need for institutional care at the ICF or SNF level care, to ensure Medicaid payment for such a placement is appropriate, and the assessment as to whether or not HSP services are an appropriate alternative to institutional care for the individual.
 - t) Service Cost Maximum (SCM) - the maximum monthly amount which may be expended for HSP services for an eligible individual. This amount is determined based on the individual's DON score and the specific programmatic component of HSP through which the individual is being served.
 - u) Service Plan - specifically, the Home Services Program Service Plan HOMB-SERVICES-PROGRAM-SERVICES-PLAN (IL 488-1049) or Home Services Program Service Plan Addendum HOMB--SERVICES-PROGRAM-SERVICES-PLAN ADDENDUM (IL 488-1050) forms, on which all services to be provided to an individual through HSP are listed.
 - v) Services - The necessary tasks provided to an individual, in one or more of the areas listed in Section 676.40 and listed on the individual's Service Plan, through HSP with the intent of preventing the unnecessary institutionalization of the individual.
 - w) Skilled Nursing Facility (SNF) - A facility that provides regular and on-going nursing level care to its residents due to the residents' medical conditions, as well as those services necessary for safe and adequate living.

(Source: Amended at 22 Ill. Reg. effective
OCT 23 1998)

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DEPARTMENT OF NATURAL RESOURCES

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- 1) Heading of the Part: The Taking of Wild Turkeys - Spring Season
- 2) Code Citation: 17 Ill. Adm. Code 710
- 3) Section Numbers: Adopted Action:
710.10 Amendments
710.22 Amendments
710.30 Amendments
710.50 Amendments
- 4) Statutory Authority: Implementing and authorized by Sections 1.3, 1.4, 1.20, 2.9, 2.10 and 2.11 of the Wildlife Code [520 ILCS 5/1.3, 1.4, 1.20, 2.9, 2.10 and 2.11].
- 5) Effective Date of Amendments: October 23, 1998
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendments, including all material incorporated by reference is on file in the Department of Natural Resource's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: July 31, 1998, 22 Ill. Reg. 14110
- 10) Has JCAR issued a Statement of Objections to these rules? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Amendments were made to this Part to open new counties, clarify tagging requirements for harvested turkeys, and open and close State-owned or -managed sites to the spring season.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Jack Price
Department of Natural Resources
524 S. Second Street, Room 430

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Springfield, IL 62701-1787
217/782-1809

The full text of the Adopted Amendments begins on the next page:

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TITLE 17: CONSERVATION
CHAPTER 1: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER e: LAW ENFORCEMENT

PART 710

THE TAKING OF WILD TURKEYS - SPRING SEASON

Section	
710.5	Hunting Zones
710.10	Hunting Seasons
710.20	Statewide Turkey Permit Requirements
710.21	Turkey Permit Requirements - Special Hunts (Renumbered)
710.22	Turkey Permit Requirements - Landowner/Tenant Permits
710.25	Turkey Permit Requirements - Special Hunts
710.28	Turkey Permit Requirements - Heritage Youth Turkey Hunt
710.30	Turkey Hunting Regulations
710.40	Other Regulations (Repealed)
710.50	Regulations at Various Department Owned or Managed Sites
710.55	Special Hunts for Disabled Hunters
710.60	Releasing or Stocking of Turkeys

AUTHORITY: Implementing and authorized by Sections 1.3, 1.4, 1.20, 2.9, 2.10 and 2.11 of the Wildlife Code [520 ILCS 5/1.3, 1.4, 1.20, 2.9, 2.10 and 2.11].

SOURCE: Adopted at 4 Ill. Reg. 15, p. 153, effective April 1, 1980; codified at 5 Ill. Reg. 10643; amended at 6 Ill. Reg. 3852, effective March 31, 1982; amended at 7 Ill. Reg. 4208, effective March 25, 1983; amended at 8 Ill. Reg. 5663, effective April 16, 1984; amended at 9 Ill. Reg. 6200, effective April 24, 1985; amended at 10 Ill. Reg. 6848, effective April 4, 1986; amended at 11 Ill. Reg. 2267, effective January 20, 1987; amended at 12 Ill. Reg. 5342, effective March 8, 1988; amended at 13 Ill. Reg. 5090, effective April 4, 1989; amended at 14 Ill. Reg. 663, effective January 2, 1990; amended at 15 Ill. Reg. 4161, effective March 4, 1991; amended at 16 Ill. Reg. 1843, effective January 17, 1992; amended at 17 Ill. Reg. 3184, effective March 2, 1993; amended at 18 Ill. Reg. 1156, effective January 18, 1994; emergency amendment at 18 Ill. Reg. 3751, effective March 1, 1994, for a maximum of 150 days; emergency expired July 29, 1994; amended at 19 Ill. Reg. 2450, effective February 17, 1995; emergency amendment at 19 Ill. Reg. 5312, effective April 1, 1995, for a maximum of 150 days; emergency expired August 29, 1995; amended at 20 Ill. Reg. 777, effective December 29, 1995; recodified by changing the agency name from Department of Conservation to Department of Natural Resources at 20 Ill. Reg. 9389; amended at 21 Ill. Reg. 3125, effective March 3, 1997; amended at 22 Ill. Reg. 2192, effective January 2, 1998; amended at 22 Ill. Reg. 19568, effective OCT 23 1998.

Section 710.10 Hunting Seasons

- a) Northern Zone Season Dates:

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1st Season: Monday, April 12 - Friday, April 16, 1999
~~Monday, April 13 - Friday, April 17, 1998~~

2nd Season: Saturday, April 17 - Thursday, April 22, 1999
~~Saturday, April 18 - Thursday, April 23, 1998~~

3rd Season: Friday, April 23 - Friday, April 30, 1999
~~Friday, April 24 - Friday, May 1, 1998~~

4th Season: Saturday, May 1 - Wednesday, May 12, 1999
~~Saturday, May 2 - Wednesday, May 13, 1998~~

b) Southern Zone Season Dates:

1st Season: Monday, April 5 - Friday, April 9, 1999
~~Monday, April 6 - Friday, April 10, 1998~~

2nd Season: Saturday, April 10 - Thursday, April 15, 1999
~~Saturday, April 11 - Thursday, April 16, 1998~~

3rd Season: Friday, April 16 - Friday, April 23, 1999
~~Friday, April 17 - Friday, April 24, 1998~~

4th Season: Saturday, April 24 - Wednesday, May 5, 1999
~~Saturday, April 25 - Wednesday, May 6, 1998~~

c) Open Counties:

NORTHERN ZONE

Adams
 Boone
 Brown
 Bureau
 Calhoun
 Carroll
 Cass
 Christian
 Clark
 Coles
 Cumberland
 Fulton
 Greene
 Grundy
 Hancock
 Henderson
 Henry
 Jersey
 Jo Daviess
 Kankakee
 Knox

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LaSalle
 Lee
 Logan
 Macoupin
 Marshall-Putnam
 Mason

McDonough
 Menard
 Mercer

Montgomery
 Morgan
 Ogle

Peoria
 Pike

Rock Island
 Sandamon

Schuyler
 Scott

Shelby
 Stephenson

Tazewell
 Vermillion

Warren
 Whiteside

Winnebago
 Woodford

SOUTHERN ZONE
 Alexander

Bond
 Clay

Clinton
 Crawford

Edwards
 Effingham

Fayette
 Hamilton

Gallatin-Hardin
 Jackson

Jasper
 Jefferson

Johnson
 Lawrence

Madison
 Marion

Massac
 Monroe

Perry
 Pope

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Pulaski
Randolph
Richland
Saline
St. Clair
Union
Wabash
Washington
Wayne
White
Williamson

(Source: Amended at 22 Ill. Reg. 19568, effective OCT 23 1998)

Section 710.22 Turkey Permit Requirements - Landowner/Tenant Permits

- a) The "immediate family" is defined as the spouse, children, and parents permanently residing on the same property as the landowner or tenant.
- b) A tenant for the purpose of this Part is one who rents 40 acres or more land for commercial agricultural purposes under an agreement with a landowner. Commercial agriculture shall be defined as utilization of land for the raising of hay, grain crops or livestock for profit.
- c) A hunting rights lease, or other non-agricultural lease, is not valid for a landowner or tenant permit.
- d) Resident landowners who own 40 acres or more of land, and resident tenants renting or leasing 40 acres or more of commercial agricultural land, and members of their immediate family may apply for one free turkey permit for their property only in counties open for turkey hunting. All resident landowners/tenants that do not reside on the property must possess a valid hunting license. Non-resident Illinois landowners of 40 or more acres of land and members of their immediate family are eligible to receive a permit for their property only for a fee of \$37.50.
- e) Landowners or tenants are not required to participate in the public drawing for permits. Landowner/tenant permits are valid for the entire 31 days encompassed by the 4 seasons, but allow the taking of only one wild turkey.
- f) Recipients of Landowner/Tenant permits to hunt their owned or leased property may apply for a second permit in the third lottery (the first working day after February 8), and a third permit in the Random Daily Drawing period that begins the first working day after March 8. Fees for these additional permits shall be \$15 for residents and \$25 for nonresidents.
- g) Proof of ownership for all landowner or tenant applications must be provided by one of the following methods:
- 1) Submittal of a copy of property deed;
 - 2) Submittal of a copy of contract for deed;

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- 3) Submittal of copy of most recent real estate tax statement upon which landowner's name appears;
 - 4) Submittal of a copy of a Farm Service Agency 156EZ form the authorized form--from--the--USDA--Natural--Resource--Conservation Service; or
 - 5) Submittal of a copy of trust agreement which must indicate that the trust owns at least 40 acres and the applicant is a current income beneficiary of the trust.
- g) If you are applying for a tenant permit, you are required to submit, in addition to the landowner certification and proof of ownership, a copy of one of the following:
- 1) Submittal of a copy of a lease (not a hunting rights lease) or rental agreement, file stamped as recorded by the County Clerk, covering the current year; or
 - 2) Submittal of a copy of a Farm Service Agency 156EZ form the authorized form--from--the--USDA--Natural--Resource--Conservation Service.
- h) If the property is owned or rented by more than one person: Only one landowner (and his immediate family) or one tenant (and his immediate family) will be issued a permit for every 40 acres of owned or rented land. For example, if 3 persons own 90 acres, only 2 of the landowners and their immediate families may receive turkey permits.
- i) Shareholders of corporations owning 40 or more acres of land in a county may apply for a free permit to hunt the corporation lands only. Only one permit per 40 acres, for a maximum number of 15 permits per county, shall be issued based on ownership of lands by corporations. Lands leased to corporations shall not be considered as a basis for a free permit for the shareholders of the lessee. Lands held in trust by corporations shall not be considered as a basis for a free permit by the shareholders of the trustee. If application is made for a free permit based upon lands owned by the corporation, a duly authorized officer of the corporation must sign a notarized statement authorizing the applicant to hunt on the corporate lands for which a permit is being requested. This statement must identify the applicant as a shareholder, identify authorization to hunt and identify that no more than 15 authorizations will be requested per county for the corporation lands. This document must be attached to the application upon submittal to the Permit Office.

(Source: OCT 23 1998 at 22 Ill. Reg. 19568, effective 19568)

Section 710.30 Turkey Hunting Regulations

It is unlawful:

- a) to use live turkey decoys, recorded calls, dogs, or bait (an area is considered as baited during the presence of and for 10 consecutive days following the removal of the bait);

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- b) to take any wild turkey except a hen with a visible beard or a gobbler (male);
- c) to take, or attempt to take, more than three wild turkeys during the spring season, one must have a valid permit for each turkey that is taken;
- d) to use any weapon except a shotgun or bow and arrow. #4 shot is the largest and #7 1/2 is the smallest size shot that may be legally used. Archers may use a long, recurved, or compound bow with a minimum pull of 40 pounds at some point within a 28-inch draw. Minimum arrow length is 20 inches and broadheads must be used. Broadheads may have fixed or expandable blades, but they must be barbless and have a minimum 7/8 inch diameter when fully opened. Broadheads with fixed blades must be metal or flint-, chert-, or obsidian-napped; broadheads with expandable blades must be metal. Any mechanical device capable of maintaining a drawn position or partially drawn position on a bow is illegal. All other bows and arrows, including electronic arrow tracking systems, are illegal;
- e) to hunt except from 1/2 hour before sunrise to noon during each day of the season;
- f) for any person having taken the legal limit of wild turkey(s) to further participate with a weapon in any hunting party for the purpose of taking additional wild turkeys;
- g) for any person to possess while in the field during wild turkey season any turkey permit issued to another person (permits are non-transferable);
- h) to transport or leave a wild turkey without first affixing the adhesive-backed turkey permit securely around the leg. Leg tag must be affixed to the turkey immediately upon kill and before the turkey is moved, transported or field dressed. The wild turkey shall be taken whole (or field dressed) to the designated check station for the county in which it was killed, or the closest check station, by the hunter in person, by 2:00 P.M. the same day it was killed. It will be checked, tagged and recorded by the Department at the check station. The leg tag must remain attached to the leg of the turkey until it is at the legal residence of the person who legally took or possessed the turkey;
- i) for any person to shoot a wild turkey while it is in a tree before 7:00 a.m.;
- j) for any person to hunt wild turkeys without possessing a Wild Turkey Hunting Permit which shall include the hunter's signature recorded on the permit and carried on the person while hunting;
- k) for any person to use a turkey call that imitates sounds made by a turkey or to attempt to call a turkey by making these sounds while in the field from March 15 through the day before turkey season in counties open to turkey hunting.

(Source: ~~October 23, 1998~~ 22 Ill. Reg. 19568, effective

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Section 710.50 Regulations at Various Department Owned or Managed Sites

- a) Hunters must sign in/sign out at all sites in subsections (b) and (c) which are followed by a (1).
- b) Statewide regulations shall apply for the following sites:

Anderson Lake Conservation Area (1)

Argyle Lake State Park (1)

Cache River State Natural Area (1)

Campbell Pond Wildlife Management Area

Carlyle Lake Wildlife Management Area

Cypress Pond State Natural Area (1)

Dog Island Wildlife Management Area (1)

Ferne Clyffe State Park - Cedar Draper Bluff Hunting Area (1)

Fort de Chartres State Historic Site (muzzleloading shotgun or archery only) (1)

Franklin Creek State Park (1)

Giant City State Park (1)

Horseshoe Lake Conservation Area - Alexander County (controlled goose hunting area and public hunting area only)

I-24 Wildlife Management Area (1)

Jubilee State Park (archery only) (1)

Kaskaskia River State Fish and Wildlife Area (except for that area lying north of Highway 154, east of the Kaskaskia River, and south of the Risdon School Road and Beck's Landing access road) (1)

Kinkaid Lake Fish and Wildlife Area (1)

Mark Twain National Wildlife Refuge, Gardner Division

Mississippi River Fish and Wildlife Area (Pools 25 and 26)

Mississippi River Pools 16, 17, 18, 21, 22, and 24

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Oakford Conservation Area

Pere Marquette State Park (designated area only) (1)

Ray Norbut Fish and Wildlife Area (1)

Rend Lake State Fish and Wildlife Area

Saline County Fish and Wildlife Area (1)

Sanganois Conservation Area

Sielbeck Forest State Natural Area (1)

Trail of Tears State Forest (1)

Turkey Bluffs State Fish and Wildlife Area (1)

Union County Conservation Area - Firing Line Unit and Public Hunting Area only (1)

Weinberg-King State Park (1)

Wildcat Hollow State Forest (1)

c) Statewide regulations shall apply except that all hunting is allowed by site-specific permit only. The Department of Natural Resources allocates permits for these areas through the lottery process set forth in Section 710.20. This permit is only valid for the specific site and season indicated on the permit.

Apple River Canyon State Park (1)

Beaver Dam State Park

Big Bend State Fish and Wildlife Area (1)

Big River State Forest (1)

Castle Rock State Park (1)

Chauncey Marsh

Crawford County Conservation Area

East Conant

Ferne Clyffe Hunting Area (1)

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Fort Massac State Park (Youth Ages 10-15 only) (1)

Fox Ridge State Park (1)

Green River State Wildlife Area (1)

Hamilton County Conservation Area

Harry 'Babe' Woodyard State Natural Area (1)

Hidden Springs State Forest (first 2 seasons only) (1)

Johnson-Sauk Trail State Park (1)

Kickapoo State Park (1)

Lake Shelbyville-Corps of Engineers Managed Lands (Shelby County)

Lowden Miller State Forest (1)

Mackinaw River Fish and Wildlife Area (1)

Marshall Fish and Wildlife Area (1)

Mermet Lake State Fish and Wildlife Area (1)

Middlefork State Fish and Wildlife Management Area (1)

Mississippi Palisades State Park (closes after the second Sunday of the fourth season; fourth season permits will be limited to those remaining after the disabled hunt drawing) (1)

Newton Lake Fish and Wildlife Area

Panther Creek Conservation Area

Pere Marquette State Park (Piasa, Quotoga, Potawatomi Camp Areas) (no hunting allowed on weekends)

Pyramid State Park (1)

Ramsey Lake State Park (1)

Randolph County Conservation Area (1)

Red Hills State Park

Sam Dale Lake Conservation Area (1)

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Sam Parr State Park
 Sand Ridge State Forest
 Sanganois Conservation Area (Squirrel Timber Unit) (1)
 Sato
 Siloam Springs State Park (1)
 Site M
 Stephen A. Forbes State Park (1)
 Tapley Woods State Natural Area (1)
 Ten Mile Creek Fish and Wildlife Area
 Witkowsky State Wildlife Area (1)

Wolf Creek State Park (first 2 seasons only) (1)

(Source: August 3 1988 22 Ill. Reg. 19568, effective

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Site Remediation Program
- 2) Code Citation: 35 Ill. Adm. Code 740
- 3) Section Numbers: Adopted Action:

740.100	Amended
740.120	Amended
740.505	Amended
740.700	New
740.705	New
740.710	New
740.715	New
740.720	New
740.725	New
740.730	New
- 4) Statutory Authority: 415 ILCS 5/58.14
- 5) Effective Date of Amendments: October 26, 1998
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Board's Chicago office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: May 1, 1998, 22 Ill. Reg. 7483
- 10) Has JCAR issued a Statement of Objections to these rules? No
- 11) Differences between proposal and final version: Please note that while most of the changes described below are not substantive, a number of them are substantive. Also note that statutory language is shown in capital letters. The rule text employs italic print for this purpose.

 In the Table of Contents, added the word "Section" above the section numbers for Subpart G.

 In Section 740.100, made the following changes: "to establish THE ESTABLISH PROCEDURES FOR THE INVESTIGATIVE INVESTIGATION AND REMEDIAL ACTIVITIES REMEDIATION AT".

 In Section 740.120, made the following changes:

"Agency" means the Illinois Environmental Protection Agency.

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"AGENCY" MEANS THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY; ~~---(Section 3-01-of-the-Act)~~

In Section 740.120, made the following changes:

"LICENSED PROFESSIONAL ENGINEER" OR OR "LPE"

In Section 740.120, in the definition of "pesticide", made the following changes: "~~desiccant~~".

In Section 740.120, in the definition of "regulated substance", added a comma after "petroleum products".

In Section 740.120, made the following changes:

"RELEASE" MEANS ANY SPILLING, LEAKING, PUMPING, POURING, EMITTING, EMPTYING, DISCHARGING, INJECTING, ESCAPING, LEACHING, DUMPING, OR DISPOSING INTO THE ENVIRONMENT, BUT EXCLUDES ANY RELEASE WHICH RESULTS IN EXPOSURE TO PERSONS SOLELY WITHIN A WORKPLACE, WITH RESPECT TO A CLAIM WHICH SUCH PERSONS MAY ASSERT AGAINST THE EMPLOYER OF OR SUCH PERSONS; EMISSIONS FROM THE ENGINE EXHAUST OF A MOTOR VEHICLE, ROLLING STOCK, AIRCRAFT, VESSEL, OR PIPELINE PUMPING STATION ENGINE; RELEASE OF SOURCE, BYPRODUCT, OR SPECIAL NUCLEAR MATERIAL FROM A NUCLEAR INCIDENT, AS THOSE TERMS ARE DEFINED IN THE FEDERAL FEDERAL ATOMIC ENERGY ACT OF 1954, IF SUCH RELEASE IS SUBJECT TO REQUIREMENTS WITH RESPECT TO FINANCIAL PROTECTION ESTABLISHED BY THE NUCLEAR REGULATORY COMMISSION UNDER SECTION 170 OF SUCH ACT; AND THE NORMAL APPLICATION OF FERTILIZER. (Section 3.33 of the Act)

In Section 740.120, made the following changes:

"REMEDIATION APPLICANT" OR OR "RA" MEANS ANY PERSON SEEKING TO PERFORM OR PERFORMING INVESTIGATIVE OR REMEDIAL ACTIVITIES UNDER Title XVII of the Act ~~OF THE~~ ACT, INCLUDING THE OWNER OR OPERATOR OF THE SITE OR PERSONS AUTHORIZED BY LAW OR CONSENT TO ACT ON BEHALF OF OR IN LIEU OF THE OWNER OR OPERATOR OF THE SITE. (Section 58.2 of the Act)

In Section 740.120, in the first sentence of the definition of "remediation costs," changed "THE" to "the" after "selected for".

In Section 740.120, made the following changes:

"RESIDENTIAL PROPERTY" MEANS ANY REAL PROPERTY THAT IS USED FOR HABITATION BY INDIVIDUALS, OR OR where children have the opportunity for exposure to contaminants through soil ingestion or inhalation at educational facilities, health care facilities, child care facilities, or outdoor recreational areas. (Section 58.2 of the Act)

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In Section 740.120, made the following changes:

"Review and Evaluation Licensed Professional Engineer" or "RELPE" means the licensed professional engineer with whom a Remediation Applicant ~~(RA)~~ has contracted to perform review and evaluation services under the direction of the Agency.

In Section 740.505(a), made the following changes:

a) ALL REVIEWS carried out under this ~~CARRIED-OUT-UNDER-THIS~~ Part SHALL BE CARRIED OUT BY THE AGENCY OR A RELPE ~~(Review--and--Evaluation--Licensed Professional---Engineer)~~, BOTH UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER. (Section 58.7(d) of the Act)

In Section 740.505(b), made the following changes:

b) PLANS, REPORTS AND RELATED RELATED ACTIVITIES WHICH THE AGENCY OR A RELPE MAY REVIEW INCLUDE, but are not limited to:

In Section 740.505(d), changed "Section 740.705(d)" to "Section 740.705(c)".

In Section 740.505(h), made the following changes:

h) IF THE AGENCY DISAPPROVES OR APPROVES WITH CONDITIONS A PLAN OR REPORT OR FAILS TO ISSUE A FINAL DETERMINATION DETERMINATION WITHIN THE applicable review period AND THE RA HAS NOT AGREED TO A WAIVER OF THE DEADLINE, THE RA MAY, WITHIN 35 DAYS after receipt of the final determination or expiration of the deadline, FILE AN APPEAL with ~~TO~~ THE BOARD. APPEALS TO THE BOARD SHALL BE IN THE MANNER PROVIDED FOR THE REVIEW OF PERMIT DECISIONS IN SECTION 40 OF THE ACT. (Section 58.7(d)(5) of the Act)

In Section 740.700, in the last sentence, replaced "decisions" with "determinations".

In Section 740.705(a)(1)(B), added "environmental remediation" after "which the".

In Section 740.705(a)(2)(C)(vi), added "temperature" after "Low".

In Section 740.705(a)(2)(C)(viii), replaced the semi-colon with a period.

Deleted Section 740.705(a)(2)(C)(ix).

Deleted Section 740.705(a)(2)(E).

In Section 740.705(a)(3), added a comma after "Internal Revenue Code" and

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put parentheses around the last "s" in "pesticides".

In Section 740.705(c)(1), in the last sentence, replaced "its" with "a" after "to make".

In Section 740.705(c)(2), after "approved," added ", or approved with conditions,".

In Section 740.705(d), replaced "decision" with "final determination".

In Section 740.705(d)(1)(C), replaced "decision" with "determination".

In Section 740.705(d)(2), replaced the word "decision" twice with "final determination".

In Section 740.705(d)(3), replaced the first use of the word "decision" with "final determination" and replaced the second use of the word "decision" with "determination".

In Section 740.705(e), added "Revision and Resubmission" after "e)".

In Section 740.705(e)(2), replaced "decision" with "final determination".

In Section 740.705(f), made the following changes: "after its receipt of the final determination or expiration of the deadline, file an appeal with to the".

In Section 740.710(a)(1)(B), deleted the comma after "number(s)" and added "environmental remediation" after "which the".

In Section 740.710(a)(1)(C), replaced the period with a semi-colon.

In Section 740.710(a)(4), deleted "attached" after "site for which the".

In Section 740.710(a)(4), made the following changes:

~~None of the costs included in this application have been or will be deducted at any time under the Internal Revenue Code or taken into account in calculating an environmental remediation credit granted against a tax imposed under the provisions of the Internal Revenue Code.~~

In Section 740.710(a)(4), added a comma after "Section 381 of the Internal Revenue Code".

In Section 740.710(c), added a comma after "Section 381 of the Internal Revenue Code".

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In Section 740.715(b), in the first sentence, replaced "its" with "a".

In Section 740.715(c), added "Further Review by the Agency" after "c)".

In Section 740.715(c)(1), made the following changes: "and the applicable fee under Section 740.720 of this Subpart, a copy of the Agency's final determination on the budget plan ~~decision~~ accompanied".

In Section 740.715(c)(1), made the following changes: made "Application for Final Review of Remediation Costs" lower case and changed "decision" to "determination" after "budget plan".

In Section 740.715(c)(2), made the following changes: "If the budget plan determination ~~decision~~ and certification are submitted pursuant to subsection (C)(1) of this Section, the Agency may, but is not required to, conduct further review of the certified line item costs incurred for development and implementation of the Remedial Action Plan and may approve such costs as submitted. The Agency's further review shall be limited to confirming that costs approved in the Agency's budget plan determination were actually incurred by the RA for development and implementation of the Remedial Action Plan ~~if the certification in subsection (c)(1) of this Section does not apply to all line items as approved in the budget plan, the Agency shall conduct its review of the costs for the uncertified line items as if no budget plan had been approved. In that review, the Agency shall not reconsider the appropriateness of any activities, materials, labor, equipment, structures or services already approved by the Agency for the development and implementation of the Remedial Action Plan.~~ ~~the Agency shall conduct its review of the costs for the uncertified line items as if no budget plan had been approved.~~"

Added Section 740.715(c)(3) as follows:

3) If the certification in subsection (c)(1) of this Section does not apply to all line items as approved in the budget plan, the Agency shall conduct its review of the costs for the uncertified line items as if no budget plan had been approved. In that review, the Agency shall not reconsider the appropriateness of any activities, materials, labor, equipment, structures or services already approved by the Agency for the development and implementation of the Remedial Action Plan.

In Section 740.715(d), replaced "decision" with "final determination".

In Section 740.715(d)(3), replaced "decision" with "determination".

In Section 740.715(f), replaced "to" with "with" after "appeal".

In Section 740.720(b)(1), made the following change: added a comma in "\$1,000".

In Section 740.720(c)(2), made the following changes:

2) The RA must submit written certification in accordance with regulations of the Department of Commerce and Community Affairs (DCCA) that the

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remediation site is located entirely within an enterprise zone as defined in the Illinois Enterprise Zone Act [20 ILCS 655] and entirely within one or more census tracts that have been determined by DCCA to contain a majority of households consisting of low and moderate income persons. The certification shall be submitted with the budget plan or application for final review and shall clearly identify the remediation site by name, address, tax parcel identification number(s) and Illinois inventory identification number. Effective January 1, 1999, the requirement of this subsection that the certification provide that the remediation site is located entirely within one or more census tracts that have been determined by DCCA to contain a majority of households consisting of low and moderate income persons shall not apply.

In Section 740.725(a)(5), made the following changes: changed "analyses" to "analysis".

In Section 740.725(a)(8), deleted "minimally".

In Section 740.725(a)(11), made the following changes: made "Application for Final Review of Remediation Costs" lower case and changed "NFR letter" to "No Further Remediation Letter".

In Section 740.725(a)(12), added "to the extent" before "necessary".

In Section 740.725(a)(13), made the following changes: "soil, concrete, asphalt or other appropriate geologic materials as a cap, barrier or cover to the extent necessary".

In Section 740.725(a)(14), made the following changes: "soil, concrete, asphalt or other appropriate geologic materials as a cap, barrier or cover to the extent necessary".

In Section 740.725(a)(15), made the following changes: "structures to the extent that are necessary".

In Section 740.725(a)(15), replaced the period with a semi-colon after "Part".

Added Section 740.725(a)(16) as follows:

16) Costs associated with obtaining a special waste generator identification number not to exceed \$100.

In Section 740.725(b), replaced "essential" with "necessary".

In Section 740.730(c), made the following changes: "party (as described in Section 201(1) of the Illinois Income Tax Act [35 ILCS 5/201(1)]) or any person whose who tax".

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Deleted Section 740.730(e).

In Section 740.730(f), made the following changes: "improvements to the extent that such improvements are not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part ~~that serve incidentally as engineered barriers and that are not primarily designed or intended to eliminate or mitigate exposures to or migration of regulated substances or pesticides~~".

In Section 740.730(i), made the following changes: "negligence in the practice of professional engineering or ~~unprofessional conduct~~ as defined in Section 4.25 of The Professional Engineering Practice Act of 1989 [225 ILCS 325/4.25]".

In Section 740.730(j), deleted "or unprofessional conduct".

In Section 740.730(k), made the following changes: "activities to the extent such destruction or damage and such replacement is not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part";

Deleted Section 740.730(l).

In Section 740.730(r), made the following changes twice: changed "analyses" to "analysis".

In Section 740.730(x), replaced "essential" with "necessary".

Relabeled subsections (f)-(k) of Section 740.730 to (e)-(j), respectively.

Relabeled subsections (m)-(aa) of Section 740.730 to (k)-(y), respectively.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

13) Will these amendments replace an emergency amendment currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendments: For a detailed discussion of the amendments, please refer to the Illinois Pollution Control Board's opinion and order at first notice (April 16, 1998), its opinion and order at second notice (July 8, 1998), and its final opinion and order (October 15, 1998). Copies of these opinions and orders may be obtained as described below.

POLLUTION CONTROL BOARD
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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD

PART 740
SITE REMEDIATION PROGRAM
SUBPART A: GENERAL

Section	
740.100	Purpose
740.105	Applicability
740.110	Permit Waiver
740.115	Agency Authority
740.120	Definitions
740.125	Incorporations by Reference
740.130	Severability

SUBPART B: APPLICATIONS AND AGREEMENTS FOR REVIEW AND EVALUATION SERVICES

Section	
740.200	General
740.205	Submittal of Application and Agreement
740.210	Contents of Application and Agreement
740.215	Approval or Denial of Application and Agreement
740.220	Acceptance and Modification of Application and Agreement
740.225	Termination of Agreement by the Remediation Applicant (RA)
740.230	Termination of Agreement by the Agency
740.235	Use of Review and Evaluation Licensed Professional Engineer (RELPE)

SUBPART C: RECORDKEEPING, BILLING AND PAYMENT

Section	
740.300	General
740.305	Recordkeeping for Agency Services
740.310	Request for Payment
740.315	Submittal of Payment
740.320	Manner of Payment

SUBPART D: SITE INVESTIGATIONS, DETERMINATION OF REMEDIATION OBJECTIVES, PREPARATION OF PLANS AND REPORTS

Section	
740.400	General
740.405	Conduct of Site Activities and Preparation of Plans and Reports by Licensed Professional Engineer (LPE)
740.410	Form and Delivery of Plans and Reports, Signatories and

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The amendments address the responsibilities of the Illinois Environmental Protection Agency (Agency) under the environmental remediation tax credit (tax credit) program. The tax credit program allows taxpayers to credit against their Illinois income tax liability a portion of the costs that the taxpayer has spent to clean up certain contaminated properties (or "brownfields"). The tax credit is intended to give taxpayers an incentive to clean up and redevelop brownfields. Generally, the tax credit program provides a tax credit equal to 25% of the taxpayer's unreimbursed eligible remediation costs in excess of \$100,000 per site. A taxpayer who wishes to claim the tax credit must first submit to the Agency an application for review of its cleanup (or "remediation") costs. The amendments establish procedures and standards under which the Agency will consider these applications. The amendments provide that a taxpayer may obtain a preliminary review of estimated costs from the Agency before undertaking the remediation. The amendments also specify the documents that the taxpayer must provide to the Agency in an application for final review of remediation costs, and sets forth the standards and procedures under which the Agency will review such applications. The amendments specify the fees and manner of payment for obtaining Agency review and provide examples of costs considered eligible or ineligible for the tax credit. The amendments also provide for appeal of Agency decisions to the Board.

16) Information and questions regarding these adopted amendments shall be directed to:

Richard R. McGill, Jr., Attorney
Illinois Pollution Control Board
100 W. Randolph Street
Suite 11-500
Chicago IL 60601
312/814-6983

Requests for copies of any of the Illinois Pollution Control Board's opinions and orders in R98-27 should be directed to Victoria Agyeman at 312/814-3620 or at the above address and should refer to docket R98-27.

The full text of the Adopted Amendments begins on the next page:

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NOTICE OF ADOPTED AMENDMENTS

Certifications

740.415	Site Investigation -- General
740.420	Comprehensive Site Investigation
740.425	Site Investigation Report -- Comprehensive Site Investigation
740.430	Focused Site Investigation
740.435	Site Investigation Report -- Focused Site Investigation
740.440	Determination of Remediation Objectives
740.445	Remediation Objectives Report
740.450	Remedial Action Plan
740.455	Remedial Action Completion Report

SUBPART E: SUBMITTAL AND REVIEW OF PLANS AND REPORTS

Section	General
740.500	Reviews of Plans and Reports
740.505	Standards for Review of Site Investigation Reports and Related Activities
740.510	Standards for Review of Remediation Objectives Reports
740.515	Standards for Review of Remedial Action Plans and Related Activities
740.520	Standards for Review of Remedial Action Completion Reports and Related Activities
740.525	Establishment of Groundwater Management Zones
740.530	

SUBPART F: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

Section	General
740.600	Issuance of No Further Remediation Letter
740.605	Contents of No Further Remediation Letter
740.610	Payment of Fees
740.615	Duty to Record No Further Remediation Letter
740.620	Voidance of No Further Remediation Letter
740.625	

SUBPART G: REVIEW OF REMEDIATION COSTS FOR ENVIRONMENTAL REMEDIATION TAX CREDIT

Section	General
740.700	Preliminary Review of Estimated Remediation Costs
740.705	Application for Final Review of Remediation Costs
740.710	Agency Review of Application for Final Review of Remediation Costs
740.715	Fees and Manner of Payment
740.720	Remediation Costs
740.725	Ineligible Costs
740.730	

APPENDIX A

Target Compound List

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

TABLE A	Volatile Organics Analytical Parameters and Required Quantitation Limits
TABLE B	Semivolatile Organic Analytical Parameters and Required Quantitation Limits
TABLE C	Pesticide and Aroclors Organic Analytical Parameters and Required Quantitation Limits
TABLE D	Inorganic Analytical Parameters and Required Quantitation Limits

APPENDIX B	Review and Evaluation Licensed Professional Engineer Information
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AUTHORITY: Implementing Sections 58 through 58.14 and authorized by Sections 58.5, 58.6, 58.7, 58.11 and 58.14 of the Environmental Protection Act [415 ILCS 5/58 through 58.14].

SOURCE: Adopted in R97-11 at 21 Ill. Reg. 7889, effective July 1, 1997; amended in R98-27 at 22 Ill. Reg. 19580, effective OCT 26 1998.

NOTE: In this Part, the abbreviation ug is used to indicate micrograms.

SUBPART A: GENERAL

Section 740.100 Purpose

The purpose of this part is to establish investigative investigation and remedial activities remediation at sites where there is a release, threatened release, or suspected release of hazardous substances, pesticides, or petroleum and for the review and approval of those activities. (Section 58.1(a)(1) of the Act) The purpose of this Part is also to establish procedures to be followed to obtain Illinois Environmental Protection Agency review and approval of remediation costs before applying for the environmental remediation tax credit under Section 201(1) of the Illinois Income Tax Act [35 ILCS 5/201(1)].

(Source OCT 26 1998 at 22 Ill. Reg. 19580, effective 19580.)

Section 740.120 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part shall be the same as that applied to the same words or terms in the Environmental Protection Act.

"Act" means the Environmental Protection Act [415 ILCS 5].

"Agency" means the Illinois Environmental Protection Agency.

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"Agency"--means-the-Illinois-Environmental-Protection-Agency- (Section 3-01-of-the-Act)

"Agency travel costs" means costs incurred and documented for travel in accordance with 80 Ill. Adm. Code 2800 and 3000 by individuals employed by the Agency. Such costs include costs for lodging, meals, travel, automobile mileage, vehicle leasing, tolls, taxi fares, parking and miscellaneous items.

"Agricultural facility" means a site on which agricultural pesticides are stored or handled, or both, in preparation for end use, or distributed. The term does not include basic manufacturing facility sites. (Section 58.2 of the Act)

"ASTM" means the American Society for Testing and Materials. (Section 58.2 of the Act)

"Authorized agent" means a person who is authorized by written consent or by law to act on behalf of an owner, operator, or Remediation Applicant.

"Board" means the Pollution Control Board.

"Contaminant of concern" or "regulated substance of concern" means any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the remediation applicant based upon reasonable inquiry. (Section 58.2 of the Act)

"Costs" means all costs incurred by the Agency in providing services pursuant to a Review and Evaluation Services Agreement.

"Groundwater management zone" or "GMZ" means a three dimensional region containing groundwater being managed to mitigate impairment caused by the release of contaminants of concern at a remediation site.

"Indirect costs" means those costs that incurred-by-the-Agency--which cannot be attributed directly to a specific site but are necessary to support the site-specific activities, including, but not limited to, such expenses as managerial and administrative services, building rent and maintenance, utilities, telephone and office supplies.

"Laboratory costs" means costs for services and materials associated with identifying, analyzing, and quantifying chemical compounds in samples at a laboratory.

"Licensed Professional Engineer" or of "LPE" means a person,

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corporation or partnership licensed under the laws of this State to practice professional engineering. (Section 58.2 of the Act)

"Other contractual costs" means costs for contractual services not otherwise specifically identified, including, but not limited to, printing, blueprints, photography, film processing, computer services and overnight mail.

"Person" means individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, including the United States Government and each department, agency and instrumentality of the United States. (Section 58.2 of the Act)

"Personal services costs" means costs relative to the employment of individuals by the Agency. Such costs include, but are not limited to, hourly wages and fringe benefits.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. (Illinois Pesticide Act [415 ILCS 60/4])

"Practical quantitation limit" or "PQL" or "Estimated quantitation limit" means the lowest concentration that can be reliably measured within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 740.125 of this Part. For filtered water samples, PQL also means the Method Detection Limit or Estimated Detection Limit in accordance with the applicable method revision in: "Methods for the Determination of Metals in Environmental Samples," EPA Publication No. EPA/600/4-91/010; "Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039; "Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129; or "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131, all of which are incorporated by reference at Section 740.125 of this Part.

"Reasonably obtainable" means that a copy or reasonable facsimile of the record must be obtainable from a private entity or government agency by request and upon payment of a processing fee, if any.

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"Recognized environmental condition" means the presence or likely presence of any regulated substance or pesticide under conditions that indicate a release, threatened release or suspected release of any regulated substance or pesticide at, on, to or from a remediation site into structures, surface water, sediments, groundwater, soil, fill or geologic materials. The term shall not include de minimis conditions that do not present a threat to human health or the environment.

"Regulated substance" means any hazardous substance as defined under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510) and petroleum products, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). (Section 58.2 of the Act)

"Regulated substance of concern" or "contaminant of concern" means any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the Remediation Applicant based upon reasonable inquiry. (Section 58.2 of the Act)

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of or such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Federal Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of such Act; and the normal application of fertilizer. (Section 3.33 of the Act)

"Remedial action" means activities associated with compliance with the provisions of Sections 58.6 and 58.7 of the Act, including, but not limited to, the conduct of site investigations, preparation of work plans and reports, removal or treatment of contaminants, construction and maintenance of engineered barriers, and/or implementation of institutional controls. (Section 58.2 of the Act)

"Remediation applicant" or "RA" means any person seeking to perform or performing investigative or remedial activities under Title XVII of the Act of the Act, including the owner or operator of the site or persons authorized by law or consent to act on behalf of or in lieu of the owner or operator of the site. (Section 58.2 of the Act)

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"Remediation costs" means reasonable costs paid for investigating and remediating regulated substances of concern consistent with the remedy selected for the site. For purposes of Subpart G of this Part, "Remediation costs" shall not include costs incurred prior to January 1, 1998, costs incurred after the issuance of a No Further Remediation Letter under Subpart F of this Part, or costs incurred more than 12 months prior to acceptance into the Site Remediation Program under this Part. (Section 58.2 of the Act)

"Remediation objective" means a goal to be achieved in performing remedial action, including but not limited to the concentration of a contaminant, an engineered barrier or engineered control, or an institutional control established under Section 58.5 of the Act or Section 740. Subpart D of this Part.

"Remediation site" means the single location, place, tract of land, or parcel or portion of any parcel of property, including contiguous property separated by a public right-of-way, for which review, evaluation, and approval of any plan or report has been requested by the Remediation Applicant in its application for review and evaluation services. This term also includes, but is not limited to, all buildings and improvements present at that location, place, or tract of land.

"Residential property" means any real property that is used for habitation by individuals, or where children have the opportunity for exposure to contaminants through soil ingestion or inhalation at educational facilities, health care facilities, child care facilities, or outdoor recreational areas. (Section 58.2 of the Act)

"Review and Evaluation Licensed Professional Engineer" or "RELPE" means the licensed professional engineer with whom a Remediation Applicant (RA) has contracted to perform review and evaluation services under the direction of the Agency.

"Site" means any single location, place, tract of land or parcel of property or portion thereof, including contiguous property separated by a public right-of-way. (Section 58.2 of the Act) This term also includes, but is not limited to, all buildings and improvements present at that location, place or tract of land.

(Source: Amended at 22 Ill. Reg. 19580, effective Oct 26 1998)

SUBPART E: SUBMITTAL AND REVIEW OF PLANS AND REPORTS

Section 740.505 Reviews of Plans and Reports

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- a) All reviews carried out under this ~~carried-out-under-this~~ Part shall be carried out by the Agency or a RELPE (Review-and-Evaluation Licensed--Professional--Engineer), both under the direction of a Licensed Professional Engineer. (Section 58.7(d) of the Act)
- b) Plans, reports and related ~~related~~ activities which the Agency or a RELPE may review include, but are not limited to:
- 1) Site Investigation Reports and related activities;
 - 2) Remediation Objectives Reports;
 - 3) Remedial Action Plans and related activities; and
 - 4) Remedial Action Completion Reports and related activities. (Section 58.7(d)(2) of the Act)
- c) Only the Agency shall have the authority to approve, disapprove, or approve with conditions a plan or report as a result of the review process, including those plans or reports reviewed by a RELPE. (Section 58.7(d)(3) of the Act)
- d) Except as provided in subsection (d)(5) below and Section 740.705(c) of this Part, the Agency shall have 60 days from the receipt of any plan or report to conduct a review and make a final determination to approve or disapprove the plan or report, or approve the plan or report with conditions. All reviews shall be based on the standards set forth in this Subpart E.
- 1) The Agency's record of the date of receipt of a plan or report shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from the Agency or certified or registered mail.
 - 2) Submittal of an amended plan or report restarts the time for review.
 - 3) The RA may waive the time line for review upon a request from the Agency or at the RA's discretion.
 - 4) The Agency shall not be required to review any plan or report submitted out of the sequence for plans and reports set forth in this Part.
 - 5) If any plans or reports are submitted concurrently, the Agency's timeline for review shall increase to a total of 90 days for all plans or reports so submitted.
- e) Upon completion of the review, the Agency shall notify the RA in writing of its final determination on the plan or report. The Agency's notification shall be made in accordance with Section 740.215(b) of this Part. If the Agency disapproves a plan or report or approves a plan or report with conditions, the written notification shall contain the following information, as applicable:
- 1) An explanation of the specific type of information or documentation, if any, that the Agency deems the RA did not provide;
 - 2) A listing of the Sections of Title XVII of the Act or this Part that may be violated if the plan or report is approved as submitted;
 - 3) A statement of the specific reasons why Title XVII of the Act or

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- this Part may be violated if the plan or report is approved as submitted;
- 4) A statement of the reasons for conditions if conditions are required.
 - f) The Agency may, to the extent consistent with review deadlines, provide the RA with a reasonable opportunity to correct deficiencies prior to sending a disapproval. However, the correction of such deficiencies by the submittal of additional information may, in the sole discretion of the Agency, restart the time for review.
 - g) If the RA has entered into a contract with a RELPE under Subpart B of this Part, the Agency shall assign plans and reports submitted by the RA to the RELPE for initial review.
 - 1) The RELPE's review shall be conducted in accordance with this Subpart E.
 - 2) Upon completion of the review, the RELPE shall recommend to the Agency approval or disapproval of the plan or report or approval of the plan or report with conditions.
 - 3) Unless otherwise approved by the Agency in writing, the RELPE shall have 30 days to complete the review of a plan or report and forward the recommendation to the Agency. If any plans or reports have been submitted concurrently to the Agency, the RELPE shall have a total of 45 days to complete the review of all plans or reports so submitted, unless otherwise approved by the Agency in writing.
 - 4) The recommendation of the RELPE shall be in writing, shall include reasons supporting the RELPE's recommendation, and shall be accompanied by all documents submitted by the RA and any other information relied upon by the RELPE in reaching a decision.
 - h) If the Agency disapproves or approves with conditions a plan or report or fails to issue a final determination ~~determination~~ within the applicable review period and the RA has not agreed to a waiver of the deadline, the RA may, within 35 days after receipt of the final determination, or expiration of the deadline, file an appeal with the Board. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act. (Section 58.7(d)(5) of the Act)

(Source: Amended at 22 Ill. Reg. 19580, effective Oct 26 1998)

SUBPART G: REVIEW OF REMEDIATION COSTS FOR
ENVIRONMENTAL REMEDIATION TAX CREDIT

Section 740.700 General

This Subpart sets forth the procedures to be followed by an RA to obtain Agency review and approval of remediation costs before applying for the environmental remediation tax credit under Section 201(1) of the Illinois Income Tax Act [35

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ILCS 5/201(1)). It contains procedures for preliminary reviews of estimated remediation costs and final reviews of remediation costs actually incurred, establishes fees for the Agency's reviews, provides for appeals of Agency determinations, and includes examples of remediation costs and ineligible costs.

(Source: Added at 22 Ill. Reg. effective

OCT 26 1998 19580

Section 740.705 Preliminary Review of Estimated Remediation Costs

a) The RA for any remediation site enrolled in the Site Remediation Program may request a preliminary review of estimated remediation costs by submitting a budget plan along with the Remedial Action Plan required under Section 740.450 of this Part. No budget plan shall be accepted for review by the Agency unless a Remedial Action Plan satisfying the requirements of Section 740.450 of this Part also has been submitted. The budget plan shall be submitted on forms prescribed and provided by the Agency and shall include, but not be limited to, the following information:

1) Identification of applicant and remediation site:

A) The full legal name, address and telephone number of the RA, any authorized agents acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;

B) The address, site name, tax parcel identification number(s) and Illinois inventory identification number for the remediation site for which the environmental remediation tax credit is being sought and the date of acceptance of the site into the Site Remediation Program;

C) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA.

2) Line item estimates of the costs that the RA anticipates will be incurred for the development and implementation of the Remedial Action Plan, including but not limited to:

A) Site investigation activities:

- i) Drilling costs;
- ii) Physical soil analysis;
- iii) Monitoring well installation;
- iv) Disposal costs.

B) Sampling and analysis activities:

- i) Soil analysis costs;
- ii) Groundwater analysis costs;
- iii) Well purging costs;
- iv) Water disposal costs.

C) Remedial activities:

- i) Groundwater remediation costs;
- ii) Excavation and disposal costs;

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- iii) Land farming costs;
- iv) Above-ground bio-remediation costs;
- v) Land application costs;
- vi) Low temperature thermal treatment costs;
- vii) Backfill costs;
- viii) In-situ soil remediation costs.

D) Report preparation costs.

3) A certification, signed by the RA or authorized agent and notarized, as follows:

I, [name of RA, if individual, or authorized agent of RA], hereby certify that neither [name of RA] is certifying or name of RA if authorized agent is certifying], nor any related party (as described in Section 201(1) of the Illinois Income Tax Act [35 ILCS 5/201(1)]), nor any person whose tax attributes ["I" if RA is certifying or name of RA if authorized agent is certifying] have [has] succeeded to under Section 381 of the Internal Revenue Code, caused or contributed in any material respect to the release or substantial threat of a release of regulated substance(s) or pesticide(s) that are identified and addressed in the Remedial Action Plan submitted for the site identified above.

4) The original signature of the RA or authorized agent acting on behalf of the RA.

b) The budget plan shall be accompanied by the applicable fee for review as provided in Section 740.720 of this Subpart. Budget plans shall be mailed or delivered to the address designated by the Agency on the forms. Requests that are hand-delivered shall be delivered during the Agency's normal business hours.

c) The time for the Agency to review the budget plan begins on the date that the Agency receives the budget plan. The Agency's record of the date of receipt of the budget plan shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from registered or certified mail. The RA may waive the time for review. The time frames for the Agency review are:

1) If the budget plan is submitted with the Remedial Action Plan, the submission of the budget plan shall be deemed an automatic 60-day waiver of the applicable review period for the Remedial Action Plan, as set forth in Section 740.505(d) of this Part. In this instance, the Agency shall have 120 days from its receipt of the two documents to make a final determination on the two documents.

2) If the budget plan is not submitted with the Remedial Action Plan, the budget plan may not be submitted until after the Agency has made a final determination on the Remedial Action Plan. If the budget plan is submitted after the Agency has approved, or approved with conditions, the Remedial Action Plan, the Agency

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shall have 60 days from its receipt of the budget plan to make a final determination on the budget plan.

- 3) If an amended Remedial Action Plan or amended budget plan is submitted before an Agency final determination on the Remedial Action Plan and budget plan, the Agency shall have 120 days from its receipt of the amended document to make a final determination on the two documents.

- 4) If an amended budget plan is submitted without an amended Remedial Action Plan and after the Agency's final determination on the Remedial Action Plan, the Agency shall have 60 days from its receipt of the amended budget plan to make a final determination on the amended budget plan.

- d) The Agency shall review the budget plan and the Remedial Action Plan to determine, in accordance with Sections 740.725 and 740.730 of this Part, whether the estimated costs are remediation costs. Upon completion of the preliminary review, the Agency shall notify the RA in writing of its final determination to approve, disapprove or modify the estimated remediation costs submitted in the budget plan.

1) If a budget plan is disapproved or approved with modification of estimated remediation costs, the written notification shall contain the following information as applicable:

- A) An explanation of the specific type of information or documentation, if any, that the Agency deems the RA did not provide;
- B) The reasons for the disapproval or modification of estimated remediation costs;
- C) Citations to statutory or regulatory provisions upon which the determination is based.

- 2) The Agency may combine the notification of its final determination on a budget plan with the notification of its final determination on the corresponding Remedial Action Plan.

- 3) The Agency's notification of final determination shall be by certified or registered mail postmarked with a date stamp and with return receipt requested. The Agency's determination shall be deemed to have taken place on the postmarked date that the notice is mailed.

- e) Revision and Resubmission

- 1) If the Agency disapproves a Remedial Action Plan or approves a Remedial Action Plan with conditions in accordance with Subpart E of this Part, the Agency may return the corresponding budget plan to the RA without review. If the Remedial Action Plan is amended as a result of the Agency action, the RA may submit a revised budget plan for review. No additional fee shall be required for this review.

- 2) If the Remedial Action Plan is amended by the RA and the RA intends to submit the Agency's final determination on the budget plan in accordance with Section 740.715(c) of this Subpart, the budget plan shall be revised accordingly and resubmitted for

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Agency review. No additional fee shall be required for this review.

- f) If the Agency disapproves or modifies the budget plan or fails to issue a final determination within the applicable review period, the RA may, within 35 days after receipt of the final determination or expiration of the deadline, file an appeal with the Board. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act.

(Source: Added at 22 Ill. Reg. 19580, effective OCT 26 1998)

Section 740.710 Application for Final Review of Remediation Costs

- a) The RA for any remediation site enrolled in the Site Remediation Program may submit an application for final review of remediation costs. No application shall be submitted until a No Further Remediation Letter has been issued and the No Further Remediation Letter for an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law) has been recorded in the chain of title for the site, all in accordance with Title XVII of the Act and Subpart F of this Part. The application shall be submitted on forms prescribed and provided by the Agency and shall include, but not be limited to, the following information:
 - 1) Identification of applicant and remediation site;

- A) The full legal name, address and telephone number of the RA, any authorized agents acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;

- B) The address, site name, tax parcel identification number(s) and Illinois inventory identification number for the remediation site for which the environmental remediation tax credit is being sought and the date of acceptance of the site into the Site Remediation Program;

- C) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA;

- 2) A true and correct copy of the No Further Remediation Letter(s) for affidavit(s) under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter(s) has issued by operation of law) for the remediation site as recorded in the chain of title for the site and certified by the appropriate County Recorder or Registrar of Titles;

- 3) Itemization and documentation of remediation activities at the remediation site for which the environmental remediation tax credit is sought and for the costs of remediation incurred by the RA at the site, including invoices, billings and dated, legible receipts along with canceled checks or other Agency-approved

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methods of proof of payment;

- 4) A certification, signed by the RA or authorized agent and notarized, as follows:

I, [name of RA, if individual, or authorized agent of RA], hereby certify that:

The site for which this application for an environmental remediation tax credit is submitted is the same site as the site for which the No Further Remediation Letter was issued;

All the costs included in this application were incurred at the site and for the regulated substance(s) or pesticide(s) for which the No Further Remediation Letter was issued;

The costs submitted were paid by ["me" if RA is certifying or name of RA if authorized agent is certifying] and are accurate to the best of my knowledge and belief;

None of the costs included in this application were incurred before January 1, 1998, or more than 12 months before the enrollment of the site in the Site Remediation Program, or after the date of issuance of the No Further Remediation Letter;

Neither ["I" if RA is certifying or name of RA if authorized agent is certifying], nor any related party (as described in Section 201(1) of the Illinois Income Tax Act [35 ILCS 5/201(1)], nor any person whose tax attributes ["I" if RA is certifying or name of RA if authorized agent is certifying] have [has] succeeded to under Section 381 of the Internal Revenue Code, caused or contributed in any material respect to the release or substantial threat of a release of regulated substance(s) or pesticide(s) for which the No Further Remediation Letter was issued.

- 5) The original signature of the RA or of the authorized agent acting on behalf of the RA.

b) The application for final review shall be accompanied by the applicable fee for review as provided in Section 740.720 of this Subpart. Applications shall be mailed or delivered to the address designated by the Agency on the forms. Requests that are hand-delivered shall be delivered during the Agency's normal business hours.

c) The Agency's acceptance of a certification that neither the RA, nor any related party (as described in Section 201(1) of the Illinois Income Tax Act [35 ILCS 5/201(1)]), nor any person whose tax attributes the RA has succeeded to under Section 381 of the Internal Revenue Code, caused or contributed in any material respect to the

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release or substantial threat of a release for which the environmental remediation tax credit is requested shall not bind the Agency or the State and shall not be used as a defense with regard to any enforcement or cost recovery actions that may be initiated by the State or any other party.

(Source: Added at 22 Ill. Reg. 19580, effective OCT 26 1998)

Section 740.715 Agency Review of Application for Final Review of Remediation Costs

a) The Agency shall review the application for final review of remediation costs to determine, in accordance with Sections 740.725 and 740.730 of this Part, whether the costs incurred are remediation costs.

b) The Agency shall have 60 days after the receipt of an application for final review to make a final determination on the application. The Agency's record of the date of receipt of the application shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from registered or certified mail. The RA may waive the time for review. Submittal of an amended application restarts the time for review.

c) Further Review by the Agency

1) If a preliminary review of a budget plan has been obtained under Section 740.705 of this Subpart, the RA may submit, along with the application, supporting documentation, and the applicable fee under Section 740.720 of this Subpart, a copy of the Agency's final determination on the budget plan accompanied by a certification, signed by the RA or authorized agent and notarized, as follows:

I, [name of RA, if individual, or name of authorized agent of RA], hereby certify that the actual remediation costs incurred at the site for line items

[list line items to which certification applies] and identified in the application for final review of remediation costs are equal to or less than the costs approved for the corresponding line items in the attached budget plan determination.

2) If the budget plan determination and certification are submitted pursuant to subsection (c)(1) of this Section, the Agency may, but is not required to, conduct further review of the certified line item costs incurred for development and implementation of the Remedial Action Plan and may approve such costs as submitted. The Agency's further review shall be limited to confirming that costs approved in the Agency's budget plan determination were

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actually incurred by the RA for development and implementation of the Remedial Action Plan.

- 3) If the certification in subsection (c)(1) of this Section does not apply to all line items as approved in the budget plan, the Agency shall conduct its review of the costs for the uncertified line items as if no budget plan had been approved. In that review, the Agency shall not reconsider the appropriateness of any activities, materials, labor, equipment, structures or services already approved by the Agency for the development and implementation of the Remedial Action Plan.

- d) Upon completion of the final review, the Agency shall notify the RA in writing of its final determination to approve, disapprove or modify the remediation costs submitted in the application. If an application is disapproved or approved with modification of remediation costs, the written notification shall contain the following information as applicable:

- 1) An explanation of the specific type of information or documentation, if any, that the Agency deems the RA did not provide;
- 2) The reasons for the disapproval or modification of remediation costs;
- 3) Citations to statutory or regulatory provisions upon which the determination is based.

- e) The Agency's notification of final determination shall be by certified or registered mail postmarked with a date stamp and with return receipt requested. The Agency's determination shall be deemed to have taken place on the postmarked date that the notice is mailed.

- f) If the Agency disapproves or modifies the application for final review or fails to issue a final determination within the applicable review period, the RA may, within 35 days after receipt of the final determination or expiration of the deadline, file an appeal with the Board. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act.

(Source: Added at 22 Ill. Reg. 19580, effective 01-26-1998)

Section 740.720 Fees and Manner of Payment

- a) The fee for the preliminary review of estimated remediation costs conducted under Section 740.705 of this Subpart shall be as follows:

- 1) Except as provided in subsection (a)(2) of this Section, the fee for the preliminary review shall be \$500 for each remediation site reviewed.

- 2) There shall be no fee for a preliminary review if the requirements of subsection (c) of this Section are satisfied.

- b) The fee for the final review of remediation costs under Section 740.715 of this Subpart shall be as follows:

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- 1) Except as provided in subsection (b)(2) of this Section, the fee for the final review shall be \$1,000 for each remediation site reviewed.

- 2) The fee for the final review shall be \$250 if the requirements of subsection (c) of this Section are satisfied.

- c) To obtain the fee waiver under subsection (a)(2) of this Section or the reduced fee under subsection (b)(2) of this Section:

- 1) The total remediation costs for the site must be \$100,000 or less; and

- 2) The RA must submit written certification in accordance with regulations of the Department of Commerce and Community Affairs (DCCA) that the remediation site is located entirely within an enterprise zone as defined in the Illinois Enterprise Zone Act [20 ILCS 655] and entirely within one or more census tracts that have been determined by DCCA to contain a majority of households consisting of low and moderate income persons. The certification shall be submitted with the budget plan or application for final review and shall clearly identify the remediation site by name, address, tax parcel identification number(s) and Illinois inventory identification number. Effective January 1, 1999, the requirement of this subsection that the certification provide that the remediation site is located entirely within one or more census tracts that have been determined by DCCA to contain a majority of households consisting of low and moderate income persons shall not apply.

- d) The fee for a review under this Subpart G shall be in addition to any other fees, payments or assessments under Title XVII of the Act and this Part. The fee shall be paid by check or money order made payable to "Treasurer - State of Illinois, for Deposit in the Hazardous Waste Fund." The check or money order shall include the Illinois inventory identification number and the Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA.

(Source: Added at 22 Ill. Reg. 19580, effective 01-26-1998)

Section 740.725 Remediation Costs

- a) Activities, materials, labor, equipment, structure and service costs that may be approved by the Agency as remediation costs for the environmental remediation tax credit under Section 201(1) of the Illinois Income Tax Act [35 ILCS 5/201(1)] include, but are not limited to, the following:

- 1) Preparation of bid documents and contracts for procurement of contractors, subcontractors, analytical and testing laboratories, labor, services and suppliers of equipment and materials;

- 2) Engineering services performed in accordance with Section 58.6 of the Act and implementing regulations at Sections 740.235 and

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- 740.405 of this Part;
- 3) Site assessment and remedial investigation activities conducted in accordance with Sections 740.410, 740.415, 740.420 and 740.430 of this Part;
 - 4) Report or plan preparation conducted in accordance with Sections 740.425, 740.435, 740.445, 740.450 and 740.455 of this Part;
 - 5) Collection, analysis or measurement of site samples in accordance with Section 740.415(d) of this Part;
 - 6) Groundwater monitoring well installation, operation, maintenance and construction materials;
 - 7) Removal, excavation, consolidation, preparation, containerization, packaging, transportation, treatment or off-site disposal of wastes, environmental media (e.g., soils, sediments, groundwater, surface water, debris), containers or equipment contaminated with regulated substances or pesticides at concentrations exceeding remediation objectives pursuant to an approved Remediation Objectives Report in accordance with Section 740.445 of this Part. Activities must be in compliance with all applicable state or federal statutes and regulations;
 - 8) Clean backfill materials in quantities necessary to replace soils excavated and disposed off-site that were contaminated with regulated substances or pesticides at levels exceeding remediation objectives pursuant to an approved Remediation Objectives Report in accordance with Section 740.445 of this Part;
 - 9) Transportation, preparation and placement of clean backfill materials pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
 - 10) Design, testing, permitting, construction, monitoring and maintenance of on-site treatment systems pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
 - 11) Engineering costs associated with preparation of a budget plan in accordance with Section 740.705 of this Subpart or an application for final review of remediation costs in accordance with Section 740.710 of this Subpart if prepared before the issuance of the No Further Remediation Letter (by the Agency or by operation of law);
 - 12) Removal or replacement of concrete, asphalt or paving to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
 - 13) Clay, soil, concrete, asphalt or other appropriate materials as a cap, barrier or cover to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
 - 14) Placement of clay, soil, concrete, asphalt or other appropriate materials as a cap, barrier or cover to the extent necessary to

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achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;

- 15) Destruction or dismantling and reassembly of above-grade structures to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 16) Costs associated with obtaining a special waste generator identification number not to exceed \$100.
- b) An RA may submit a request for review of remediation costs that includes an itemized accounting and documentation of costs associated with activities, materials, labor, equipment, structures or services not identified in subsection (a) of this Section if the RA submits detailed information demonstrating that those items are necessary for compliance with this Part 740, 35 Ill. Adm. Code 742 and the approved Remedial Action Plan.

(Source: Added at 22 Ill. Reg. 19580, effective Oct 26 1998)

Section 740.730 Ineligible Costs

Costs ineligible for the environmental remediation tax credit under Section 201(l) of the Illinois Income Tax Act [35 ILCS 5/201(l)] include, but are not limited to, the following:

- a) Costs not incurred by the RA;
- b) Costs incurred for activities, materials, labor or services relative to remediation at a site other than the site for which the No Further Remediation Letter was issued;
- c) Costs for remediating a release or substantial threat of a release of regulated substances or pesticides that was caused or contributed to in any material respect by the RA, any related party (as described in Section 201(l) of the Illinois Income Tax Act [35 ILCS 5/201(l)]) or any person whose tax attributes the RA has succeeded to under Section 381 of the Internal Revenue Code;
- d) Costs incurred before January 1, 1998, or more than 12 months before enrollment of the site in the Site Remediation Program, or after the date of issuance of a No Further Remediation Letter issued pursuant to Section 58.10 of the Act and Subpart F of this Part;
- e) Costs associated with material improvements to the extent that such improvements are not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- f) Costs or losses resulting from business interruption;
- g) Costs incurred as a result of vandalism, theft, negligence or fraudulent activity by the RA or the agent of the RA;
- h) Costs incurred as a result of negligence in the practice of professional engineering as defined in Section 4 of the Professional Engineering Practice Act of 1989 [225 ILCS 325/4].

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- i) Costs incurred as a result of negligence by any contractor, subcontractor, or other person providing remediation services at the site;
- j) Costs associated with replacement of above-grade structures destroyed or damaged during remediation activities to the extent such destruction or damage and such replacement is not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- k) Attorney fees;
- l) Purchase costs of non-consumable materials, supplies, equipment or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment or tools;
- m) Costs for repairs or replacement of equipment or tools due to neglect, improper or inadequate maintenance, improper use, loss or theft;
- n) Costs associated with activities that violate any provision of the Act or Board, Agency or Illinois Department of Transportation regulations;
- o) Costs associated with improperly installed or maintained groundwater monitoring wells;
- p) Costs associated with unnecessary, irrelevant or improperly conducted activities, including, but not limited to, data collection, testing, measurement, reporting, analysis, modeling, risk assessment or sample collection, transportation, measurement, analysis or testing;
- q) Stand-by or demurrage costs;
- r) Interest or finance costs charged as direct costs;
- s) Insurance costs charged as direct costs;
- t) Indirect costs for personnel, labor, materials, services or equipment charged as direct costs;
- u) Costs associated with landscaping, vegetative cover, trees, shrubs and aesthetic considerations;
- v) Costs associated with activities, materials, labor, equipment, structures or services not necessary for compliance with this Part 740.35 Ill. Adm. Code 742 and the approved Remedial Action Plan;
- w) Costs determined to be incorrect as a result of a mathematical, billing or accounting error;
- x) Costs that are not adequately documented;
- y) Costs that are determined to be unreasonable.

(Source: Adopted 26th 1998 Ill. Reg. 19580 3, effective)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY RULE

1) Heading of the Part: Sexually Violent Persons2) Code Citation: 59 Ill. Adm. Code 2993) Section Numbers:Proposed Action:

299.100 New Section

299.110 New Section

299.120 New Section

299.130 New Section

299.200 New Section

299.210 New Section

299.220 New Section

299.230 New Section

299.300 New Section

299.310 New Section

299.320 New Section

299.330 New Section

299.340 New Section

299.350 New Section

299.400 New Section

299.410 New Section

299.420 New Section

299.430 New Section

299.500 New Section

299.600 New Section

299.610 New Section

299.620 New Section

299.630 New Section

299.640 New Section

299.650 New Section

299.660 New Section

299.670 New Section

299.680 New Section

299.690 New Section

299.700 New Section

299.800 New Section

299.810 New Section

299.820 New Section

299.830 New Section

299.840 New Section

299.850 New Section

299.900 New Section

299.910 New Section

299.920 New Section

299.930 New Section

299.940 New Section

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APPENDIX A

DEPARTMENT OF HUMAN SERVICES
NOTICE OF EMERGENCY RULE

- 4) Statutory Authority: Implementing and authorized by the Sexually Violent Persons Commitment Act [725 ILCS 20]
- 5) Effective Date of Amendments: October 26, 1998
- 6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: N/A
- 7) Date filed with the Index Department: October 23, 1998
- 8) A copy of the emergency rule, including any material incorporated by reference, is on file in the Department's principal office and is available for public inspection.
- 9) Reason for Emergency: This rulemaking is being promulgated on an emergency basis for the health and safety of residents within State-operated facilities. The program establishes the rights of residents and addresses issues regarding the resident behavior management system.
- 10) A Complete Description of the Subject and Issues Involved: This rulemaking establishes the operational directives of the Sexually Violent Persons Commitment Act. The rulemaking sets forth standards for treatment and behavior.
- 11) Are there any other amendments pending on this Part: No
- 12) Statement of Statewide Policy Objectives (if applicable): This rulemaking does not create or expand a State mandate.
- 13) Information and questions regarding this amendment shall be directed to:

Ms. Susan Weir, Bureau Chief
Bureau Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
3rd Floor Harris Bldg.
Springfield, Illinois 62762
(217) 785-9772
- If because of physical disability you are unable to put comments into writing, you may make them orally to the person listed above.

The full text of the Emergency Rule begins on the next page:

DEPARTMENT OF HUMAN SERVICES
NOTICE OF EMERGENCY RULE

TITLE 59: MENTAL HEALTH
CHAPTER I: DEPARTMENT OF HUMAN SERVICES

PART 299
SEXUALLY VIOLENT PERSONS

SUBPART A: GENERAL PROVISIONS

Section	Purpose
299.100	Incorporation by Reference
299.110	Definitions
299.120	Records
299.130	

SUBPART B: DETENTION AND EVALUATION

Section	
299.200	Detention Facility
299.210	Temporary Detention
299.220	Evaluator Standards
299.230	Evaluation

SUBPART C: SECURE RESIDENTIAL

Section	
299.300	Secure Residential Facility
299.310	Treatment
299.320	Periodic Re-evaluation
299.330	Rights
299.340	Medical Care
299.350	Security

SUBPART D: CONDITIONAL RELEASE

Section	
299.400	Plans
299.410	Conditional Release Orders
299.420	Monitoring
299.430	Revocation

SUBPART E: NOTIFICATION OF VICTIMS

Section	
299.500	Notification of Victims

SUBPART F: RESIDENT BEHAVIOR MANAGEMENT SYSTEM

Section	
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DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY RULE

299.600 Resident Behavior Management System
 299.610 Violations of Criminal Law
 299.620 Applicability
 299.630 Rule violation
 299.640 Preparation of Incident Reports
 299.650 Temporary Assignment to Secure Management Status
 299.660 Review of Incident Reports
 299.670 Consequences for Rule Violation
 299.680 Restitution Procedures
 299.690 Placement in Secure Management Status
 299.700 Secure Management Status Confinement Standards

SUBPART G: RESIDENT GRIEVANCES

Section
 299.800 Filing of Grievances
 299.810 Grievance Examiner
 299.820 Grievance Procedures
 299.830 Emergency Procedures
 299.840 Appeals
 299.850 Records

SUBPART H: EVALUATION AND RESEARCH

Section
 299.900 Program Evaluation
 299.910 Research
 299.920 Requirements for Submitting Research Proposals
 299.930 Criteria for Approval or Denial of Research Proposals
 299.940 Requirements for Conducting Research Projects

APPENDIX A Rule Violations

AUTHORITY: Implementing and authorized by the Sexually Violent Persons Commitment Act [725 ILCS 20].

SOURCE: Adopted by emergency rulemaking at 22 Ill. Reg. effective October 26, 1998, for a maximum of 150 days.

SUBPART A: GENERAL PROVISIONS

Section 299.100 Purpose

This rule implements the Sexually Violent Persons Commitment Act [725 ILCS 207].

Section 299.110 Incorporation by Reference

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY RULE

Any rules of an agency of the United States or the State of Illinois or of a nationally-recognized organization or association that are incorporated by reference in this Part are incorporated as of the date specified and do not include any later amendments or editions.

Section 299.120 Definitions

"Act" means the Sexually Violent Persons Commitment Act [725 ILCS 207].

"Act of sexual violence" means an act or attempted act that is a basis for an allegation made in a petition under of Section 15(b)(1) of the Act.

"Behavior Committee" means the resident's primary therapist, a security representative and at least one other member of the resident's treatment team.

"Behavioral restriction" means the withdrawal of positive incentives (e.g., restrictions of privileges and liberties) as a consequence to inappropriate behavior.

"Body search" means the removal and search of all outer garments such as coats, jackets, sweaters covering shirts, shoes, hats and gloves and a pat down of the person subsequent to removal of the outer garments.

"Chief Administrative Officer" means the highest ranking official of a correctional facility where a secure residential facility is located, or that person's designee.

"Clinical Director" means the Associate Director for Clinical Services for the Division of Disability and Behavioral Health Services of the Department, or that person's designee.

"Committed person" means a person who has been committed by the court as a sexually violent person.

"Contraband" means items that are proscribed by criminal law, departmental or facility rules or posted notices; items that a resident has no authorization to possess; or property that is in excess of that authorized by the facility.

"Corporal punishment" means physical contact intended to inflict pain for purposes of punishment.

"Correctional facility" means that correctional facility where a secure residential facility is located.

DEPARTMENT OF HUMAN SERVICES

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"Department" means the Department of Human Services.

"Detained person" means a person who the court has sent to a detention facility, approved by the Department, pursuant to a detention order or after a probable cause hearing under Section 30 of the Act.

"Force" means physical contact used to coerce or prevent some action on the part of a resident.

"Immediate family" means the spouse, child, parent or sibling(s) of the resident.

"Individual services plan" means a plan of treatment individualized for each resident that is formulated and periodically reviewed by the treatment team.

"Management status" means the provision of different levels of privileges, responsibilities and activities to provide a greater degree of individualization in the treatment of residents (e.g., admission status, secure management status, general status, high privilege status).

"Mental disorder" means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.

"Physician" means any person licensed by the State of Illinois to practice medicine in all its branches and includes any person holding a temporary license, as provided in the Medical Practice Act of 1987. Physician includes a psychiatrist as defined in this Section.

"Primary therapist" means the clinical staff person responsible for implementing the resident's treatment plan.

"Program Administrator" means the person responsible for the Department's Sexually Violent Persons Treatment Program, or that person's designee.

"Program Director" means the highest ranking official of a secure residential facility, or that person's designee.

"Psychiatrist" means a physician who has at least 3 years of formal training or primary experience in the diagnosis and treatment of mental illness.

"Psychologist" means a person who is licensed under the Clinical Psychologist Licensing Act.

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"Psychotropic medication" means medication whose use for antipsychotic, antidepressant, antimanic, antianxiety, antiandrogenic, behavior modification or behavioral management purposes is listed in AMA Drug Evaluations, latest edition, or Physician's Desk Reference, latest edition, or that are administered for any of these purposes. It also includes those tests and related procedures that are essential for the safe and effective administration of a psychotropic medication.

"Qualified professional" means a physician, psychiatrist or psychologist, with at least two years of experience in the treatment and evaluation of persons who have committed acts of sexual violence.

"Resident" means either a detained person or a committed sexually violent person placed in a facility.

"Secretary" means the Secretary of the Department of Human Services, or that person's designee.

"Secure residential facility" or "facility" refers to the program operated by the Department within the building supplied by the Illinois Department of Corrections in accord with Section 50 of the Act.

"Strip search" means the removal or arrangement of some or all of a person's clothing so as to permit a visual inspection of the body or undergarments of such person.

"Treatment" means an effort to accomplish an improvement in the mental disorder of a committed person. This includes, but is not limited to, individual and group therapy, behavior modification programs, and medication.

"Treatment team" or "team" means a cross functional, multi-disciplinary group composed, at a minimum, of the resident's primary therapist, a medical representative, a security representative, a recreation therapist or substance abuse counselor, and a psychologist.

"Transferring authority" means the agency that had custody and control of the person prior to detention under the Act.

"Victim" means a person against whom an act of sexual violence has been committed.

Section 299.130 Records

a) Required Admission Documents

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY RULE

When a resident or detained person is delivered to the custody of the Department, the following documents must be provided:

- 1) By the court:
 - A) A copy of the detention order or the court order finding probable cause that orders the person evaluated in a detention facility or the court order that commits the person to the custody of the Department.
 - B) A copy of the petition.
 - C) All additional matters that the court directs the clerk to transmit.
- 2) By the transferring authority:
 - A) A copy of the report provided to the Attorney General and the State's Attorney under Section 10(c) of the Act.
 - B) A detention summary containing any relevant medical, psychiatric, or psychological information.
 - C) Access to all master file, medical, clinical, parole or mandatory supervised release field services record information as necessary for the proper evaluation and treatment of the residents and program safety and security. This includes access to criminal history, disciplinary history, mental health records, escape risk and other relevant information. The Department shall be allowed to make copies of the relevant documents.
 - D) The name of the municipalities where the arrest of the resident and the commission of the offense occurred.

b) Access to Records

- 1) The records of residents shall be confidential.
- 2) The Department may require payment of copying costs for any records it is asked to produce.
- 3) The Department shall maintain a record in each resident's file that indicates:
 - A) The parties who have requested to inspect or copy clinical records; and
 - B) The clinical records inspected or copied.

SUBPART B: DETENTION AND EVALUATION

Section 299.200 Detention Facility

The Department may utilize a secure residential facility as a detention facility. To the extent possible considering operational, programmatic and security needs, detained persons shall be kept separate from committed persons. The Department also approves all Illinois Department of Corrections correctional facilities for the detainment of individuals until they complete any term of imprisonment imposed for a criminal conviction or adjudication of delinquency. While in the Department of Corrections, the Department of Corrections remains responsible for their care and custody.

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Section 299.210 Temporary Detention

During the course of a trial or when the detained person or committed person is ordered by the court to be present in a county, the county jail is approved for use as a temporary detention site. While in the county jail, the jail is responsible for their care and custody.

Section 299.220 Evaluator Standards

The evaluator shall be a physician, psychiatrist, or clinical psychologist who has a minimum of two years experience providing sex offender evaluation and treatment.

Section 299.230 Evaluation

An evaluation shall be conducted pursuant to Section 30 of the Act for the purpose of determining whether a detained person meets the criteria for commitment as a sexually violent person under the Act. The evaluation shall consist of, but not be limited to, a mental status examination, standardized psychological tests, a social history including information concerning sexual behaviors, an assessment of alleged and self-reported sexual behaviors, and a review of available records. The evaluation may also include an objective sexual assessment.

SUBPART C: SECURE RESIDENTIAL

Section 299.300 Secure Residential Facility

The secure residential facility shall be operated by the Department in a facility provided by the Department of Corrections pursuant to Section 50 of the Act. Standards for living conditions shall include the following provisions:

- a) Single celling shall be provided except in those cases in which adequate facilities are not available for all residents. Double celling shall be permitted only upon approval of the Program Administrator.
- b) Minimally, each cell shall be furnished with:
 - 1) A bed securely fastened to the cell;
 - 2) Clean bedding, including a mattress, blanket, sheets, pillow and pillow case;
 - 3) A wash basin with running water and flushable toilet facilities (controls may be located outside the cell); and
 - 4) Adequate lighting for reading and observation purposes.
- c) Cells shall be located at or above ground level, and have heat and ventilation consistent with the climate.
- d) Each cell shall have a single door and a food passage. When only a solid door is available, it shall be provided with a vision panel.
- e) Cleaning materials shall be made available on a regular basis.

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f) personal health and hygiene needs of the resident shall be addressed as follows:

- 1) A shower and shave no less than once per week.
- 2) State issued toilet tissue, soap, shampoo, shaving cream, towel, toothbrush, and toothpaste for daily use if the resident has insufficient commissary funds to purchase these items.
- 3) A weekly exchange of clean institutional clothes or availability of laundry services at least weekly.
- 4) False teeth, eye glasses, prosthetic devices and other essential items of personal hygiene and health shall be permitted unless they are a threat to safety or security.

Section 299.310 Treatment

- a) A resident shall be provided with adequate and humane care and treatment services pursuant to an individual services plan, which shall be formulated and periodically reviewed by the treatment team with the participation of the resident to the extent feasible and, where appropriate, such resident's guardian. A qualified professional shall be responsible for overseeing the implementation of such plan.
- b) Residents shall attend scheduled individual and group therapy sessions, objective sexual assessment appointments, and other programming as set forth in the individualized services plans. A resident may be excused from attendance requirements by the Program Director for illness, pursuant to the Resident Behavior Management System or for other good cause.
- c) If the services plan includes the administration of medication, the physician shall advise the resident, in writing, of the side effects of the medication to the extent such advice is consistent with the nature and frequency of the side effects and the resident's ability to understand the information communicated.
- d) Care and treatment shall include the regular use of sign language for any hearing impaired individual for whom sign language is a primary mode of communication and an interpreter for persons who do not understand English.
- e) If the resident refuses to consent to or enter recommended treatment, demonstrates disinterest or a lack of progress attributable to poor motivation within treatment, the team may reassign the resident to another management status.

Section 299.320 Periodic Re-evaluation

- a) The Department shall conduct an examination of the mental condition of a committed person within 6 months after an initial commitment and again at least once each 12 months for the purpose of determining whether the person has made sufficient progress to be conditionally released or discharged.
- b) Any evaluator conducting an examination under Section 55 of the Act

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shall prepare a written report of the examination no later than 30 days after the date of the examination. The evaluator shall place a copy of the report in the person's clinical records and shall provide a copy of the report to the court that committed the person.

Section 299.330 Rights

- a) No resident shall be presumed incompetent, nor shall such person be held legally disabled, except as determined by a court. Such determination shall be separate from a judicial proceeding held to determine whether a person is subject to commitment as a sexually violent person.
- b) Residents shall be provided reasonable opportunities to pursue their religious beliefs and practices subject to the program's concerns regarding security, safety, rehabilitation, institutional order, space, and resources. A resident who is an adherent or a member of any well-recognized religious denomination, the principles and tenets of which teach reliance upon services by spiritual means through prayer alone for healing by a duly accredited practitioner thereof, shall have the right to choose such services. The parent or guardian of a resident who is a minor, or a guardian of a resident who is not a minor, shall have the right to choose services by spiritual means through prayer for the resident.
- c) A resident may perform labor to which he consents, if the professional responsible for overseeing the implementation of the services plan for the resident determines that the labor would be consistent with the plan. A resident who performs labor which is of any consequential economic benefit to the Department shall be adequately compensated commensurate with the value of the work performed, in accordance with applicable federal and State statutes and regulations. A resident may be required to perform tasks of a personal housekeeping nature without compensation.
- d) An adult resident, or, if the resident is under guardianship, the resident's guardian, may refuse generally accepted treatment services, except the Resident Behavior Management System.
 - 1) Administration of Psychotropic Medication
 - A) psychotropic medication shall not be administered to any resident against his or her will or without the consent of the parent or guardian of a minor who is under the age of 18, unless:
 - i) A psychiatrist, or in the absence of a psychiatrist a physician, has determined that: the resident suffers from a mental illness or mental disorder; and the medication is in the medical interest of the resident; and the resident is either gravely disabled or poses a likelihood of serious harm to self or others; and
 - ii) The administration of such medication has been approved by the Treatment Review Committee after a

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hearing (see subsection (d)(2) of this Section). However, no such approval or hearing shall be required when the medication is administered in an emergency situation. An emergency situation exists whenever the required determinations listed in subsection (d)(1)(A)(i) of this Section have been made and a psychiatrist, or in the absence of a psychiatrist a physician, has determined that the resident poses an imminent threat of serious physical harm to self or others. In all emergency situations, the procedures set forth in subsection (d)(5) of this Section shall be followed.

B) Whenever a physician orders the administration of psychotropic medication to a resident against the person's will, the physician shall document in the resident's clinical file the facts and underlying reasons supporting the determination that the standards in subsection (d)(1)(A) of this Section have been met and:

- i) the Program Administrator shall be notified as soon as practicable; and
- ii) unless the medication was administered in an emergency situation, the Chairperson of the Treatment Review Committee shall be notified in writing within three days.

2) Treatment Review Committee Hearing Procedures

The Treatment Review Committee shall be comprised of three members appointed by the Program Administrator, two of whom shall be mental health professionals and one of whom shall be a physician. One member shall serve as Chairperson of the Committee. None of the Committee members may be involved in the current decision to order the medication. The members of the Committee shall have completed a training program in the procedural and mental health issues involved that has been approved by the Clinical Director.

A) The Program Administrator shall designate a member of the program staff not involved in the current decision to order medication to assist the resident. The staff assistant shall have completed a training program in the procedural and mental health issues involved that has been approved by the Clinical Director.

B) The resident and staff assistant shall receive written notification of the time and place of the hearing at least 24 hours prior to the hearing. The notification shall include the tentative diagnosis and the reasons why the medical staff believes the medication is necessary. The staff assistant shall meet with the resident prior to the hearing to discuss the procedural and mental health issues involved.

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C) The resident shall have the right to attend the hearing unless the Committee determines that it is likely that the person's attendance would subject the person to substantial risk of serious physical or emotional harm or pose a threat to the safety of others. If such a determination is made, the facts and underlying reasons supporting the determination shall be documented in the resident's clinical file. The staff assistant shall appear at the hearing whether or not the resident appears.

D) The documentation in the clinical file referred to in subsection (d)(1)(B) of this Section shall be reviewed by the Committee and the Committee may request the physician's personal appearance at the hearing.

E) Prior to the hearing, witnesses identified by the resident and the staff assistant may be interviewed by the staff assistant after consultation with the resident as to appropriate questions to ask. Any such questions shall be asked by the staff assistant unless cumulative, irrelevant, or a threat to the safety of individuals or the security of the facility.

F) Prior to the hearing, the resident and the staff assistant may request in writing that witnesses be interviewed by the Committee and may submit written questions for witnesses to the Chairperson of the Committee. These questions shall be asked by the Committee unless cumulative, irrelevant, or a threat to the safety of individuals or the security of the facility. If any witness is not interviewed, a written reason shall be provided.

G) Prior to the hearing, the resident and the staff assistant may request in writing that witnesses appear at the hearing. Any such request shall include an explanation of what the witnesses are expected to state. Reasonable efforts shall be made to have such witnesses present at the hearing, unless their testimony or presence would be cumulative, irrelevant, or a threat to the safety of individuals or the security of the facility, or for other reasons including, but not limited to, unavailability of the witness or matters relating to institutional order. In the event requested witnesses are unavailable to appear at the hearing but are otherwise available, they shall be interviewed by the Committee as provided for in subsections (d)(2)(F) and (d)(2)(I) of this Section.

H) At the hearing, the resident and the staff assistant may make statements and present documents that are relevant to the proceedings. The staff assistant may direct relevant questions to any witnesses appearing at the hearing. The resident may request that the staff assistant direct relevant questions to any witnesses appearing at the hearing

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and the staff assistant shall ask such questions unless cumulative, irrelevant, or a threat to the safety of individuals or the security of the facility.

I) The Committee shall make such investigation as it deems necessary. The staff assistant shall be informed of any investigation conducted by the Committee and shall be permitted to direct relevant questions to any witnesses interviewed by the Committee. The staff assistant shall consult with the resident regarding any statements made by witnesses interviewed by the Committee and shall comply with requests by the resident to direct relevant questions to such witnesses unless cumulative, irrelevant, or a threat to the safety of individuals or the security of the facility.

J) The Committee shall consider all relevant information and material that has been presented in deciding whether to approve administration of the medication.

K) A written decision shall be prepared and signed by all members of the Committee that contains a summary of the hearing and the reasons for approving or disapproving the administration of the medication. Copies of the decision shall be given to the resident, the staff assistant, and the Program Administrator. Any decision by the Committee to approve involuntary administration of psychotropic medication must be unanimous. The Program Administrator shall direct staff to comply with the decision of the Committee.

L) If the Committee approves administration of the medication, the resident shall be advised of the opportunity to appeal the decision to the Clinical Director by filing a written appeal with the Chairperson within five days after the resident's receipt of the written decision.

3) Review by Clinical Director

A) If the resident appeals the Treatment Review Committee's decision, staff shall continue to administer the medication as ordered by the physician and approved by the Committee while awaiting the Clinical Director's decision on the appeal.

B) The Chairperson of the Committee shall promptly forward the written notice of appeal to the Clinical Director or a physician designated by the Clinical Director.

C) Within five working days after receipt of the written notice of appeal, the Clinical Director shall:

- i) Review the Committee's decision, make such further investigation as deemed necessary, and submit a written decision to the Program Administrator; and
- ii) Provide a copy of the written decision to the resident, the staff assistant, and the Chairperson of the Committee.

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D) The Program Administrator shall direct staff to comply with the decision of the Clinical Director.

4) Periodic Review of Medication
A) Whenever any resident has been involuntarily receiving psychotropic medication continuously or on a regular basis for a period of six months, the administration of such medication shall, upon the resident's written request, be reviewed by the Treatment Review Committee in accordance with the procedures enumerated in subsections (d)(2) and (d)(3) of this Section. Every six months thereafter, for so long as the involuntary medication continues on a regular basis, the resident shall have the right to a review hearing upon written request.

B) Every resident who is involuntarily receiving psychotropic medication shall be evaluated by a psychiatrist at least every 30 days, and the psychiatrist shall document in the resident's clinical file the basis for the decision to continue the medication.

5) Emergency Procedures
Subsequent to the involuntary administration of psychotropic medication in an emergency situation:

A) The basis for the decision to administer the medication shall be documented in the resident's clinical file and a copy of the documentation shall be given to the resident and to the Clinical Director for review.

B) A mental health professional shall meet with the resident to discuss the reasons why the medication was administered and to give the resident an opportunity to express any concerns he or she may have regarding the medication.

6) Documentation

Copies of all notifications and written decisions concerning involuntary administration of psychotropic medication shall be placed in the resident's clinical file.

7) Minors

In the case of a resident who is a minor under the age of 18, the parent or guardian shall be sent the documentation and written decisions that are provided to the resident pursuant to this Section and shall be permitted to attend and participate in any proceedings required by this Section. Notice of any Treatment Review Committee hearing shall be promptly sent to the parent or guardian and reasonable attempts shall be made to provide such notice at least 72 hours prior to the hearing.

e) Residents may only acquire personal property in accordance with provisions of this Part or posted rules established by the Program Director where the resident is assigned. Every resident who resides in a secure residential facility shall be permitted to receive, possess and use personal property and shall be provided with a reasonable amount of storage space therefor, except as provided in

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posted rules established by the Program Director.

- 1) Possession and use of certain classes of property may be restricted by the Program Director when necessary to protect the resident or others from harm.
- 2) The professional responsible for overseeing the implementation of a resident's services plan may, with the approval of the Program Director, restrict the right to property when necessary to insure implementation of the services plan, protect such resident or others from harm, or as part of the Resident Behavior Management System.
- 3) When a resident is discharged from the facility, all of his or her lawful personal property that is in the custody of the facility shall be returned.
- 4) A resident may use his or her funds as he or she chooses, unless he or she is a minor or prohibited from doing so under a court guardianship order. A resident may deposit or cause to be deposited money in his or her name with the Department or a financial institution with the approval of the Department and the financial institution. When a resident is discharged from the Department, all of his or her unspent money, including earnings, shall be returned.
- f) A resident shall be permitted reasonable communication with persons of choice by mail, telephone and visitation. Communications may be reasonably restricted, censored, screened or monitored to protect the resident or others from harm, harassment or intimidation or to insure implementation of the resident's services plan. The Program Director shall set the times and places for the use of telephones and visits.
- g) Upon commencement of services, or as soon thereafter as the condition of the resident permits, every resident who is 12 years of age or older and the parent or guardian of a minor or person under guardianship shall be informed orally and in writing of the rights guaranteed by this Part that are relevant to the nature of the services plan. Every facility shall also post conspicuously in public areas a summary of the rights that are relevant to the services delivered by that facility.
- h) Whenever the rights of a resident that are specified in this Section are restricted, the professional responsible for overseeing the implementation of the resident's services plan shall be responsible for promptly giving notice of the restriction.
- i) The Program Administrator and the Program Director of each secure residential facility shall adopt in writing such policies and procedures as are necessary. Such policies and procedures may amplify or expand, but shall not restrict or limit, the rights of residents.

Section 299.340 Medical Care

- a) Emergency treatment shall be available to residents 24 hours a day.
- b) Residents shall be informed of the institutional procedures for

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obtaining medical or dental services.

- c) Persons committed to the secure residential facilities shall be provided medical and dental treatment, with the consent of the parent or guardian where applicable, as prescribed by a physician or dentist.
- d) A resident who has or is suspected of having a communicable disease may be isolated from other residents. This determination shall be made by a physician as deemed medically necessary.
- e) In case of critical illness or major surgery, the Program Director shall attempt to notify the person designated by the resident to be contacted in case of an emergency and, where applicable, the parent or guardian.
- f) A record of all medical and dental examinations, findings, and treatment shall be maintained.

Section 299.350 Security

a) Use of Force

- 1) Force shall be employed only as a last resort or when other means are unavailable or inadequate, and only to the degree reasonably necessary to achieve a permitted purpose. Department staff shall not employ deadly force.
 - 2) Use of force shall be terminated as soon as force is no longer necessary.
 - 3) Medical screening and/or care shall be conducted following any use of force that results in bodily injury.
 - 4) Corporal punishment is prohibited.
- b) Force may be used under the following circumstances:
- 1) To compel compliance with a lawful order given by an employee to ensure the safety and security of the facility.
 - 2) To protect oneself or any other person from physical assaults, injury or death.
 - 3) To prevent escapes from the facility or from the custody of employees in the community.
 - 4) To protect State property or the property of others from unauthorized use, possession, damage or destruction.
 - 5) To prevent or suppress a riot, revolt, mutiny or insurrection, or other serious disturbance.

c) Training

Training in procedures for use of force shall be conducted for all institutional security employees along with yearly reviews.

d) Movement of Residents

- 1) Handcuffs, security belts and/or leg irons may be used to restrain any resident when:
 - A) A person confined pending a review of an incident under Section 299.660 or in secure management status (Sections 299.650 and 299.690) is moved within the facility, or
 - B) A resident is transported outside the facility, or

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- C) Determined by the Program Director to be necessary for security.
- 2) Residents who are transported on writs shall not be permitted visits without the permission of the Program Director and the jurisdiction to which the person is transported. Visits of residents hospitalized in the community may be restricted to the immediate family and shall be subject to the general visiting policies of the hospital.
- 3) A resident shall be accompanied by at least one correctional employee of the same sex, to the extent practical, while being transported outside a facility, except in cases of an emergency.
- e) Response to Serious Institutional Disturbances
- 1) The Program Director may confine residents temporarily in all or part of the facility when determined necessary in order to maintain security of the facility or the safety of residents, employees or other persons. This decision is to be made independently of the decision by the Chief Administrative Officer to place the correctional facility on lock-down status.
 - 2) The decision to impose a temporary facility confinement shall be reviewed and approved by the Program Administrator, whenever possible, prior to the imposition of the temporary facility confinement, but in any event, promptly thereafter.
 - 3) Continuation of the temporary facility confinement shall be reviewed every 10 days by the Program Director and the Program Administrator.
- f) Searches for Contraband

1) Searches of Visitors

- A) All persons and items brought onto State property are subject to search. Prominent notices to this effect shall be posted at each facility. Visitors are also subject to the rules of the Department of Corrections (20 Ill. Adm. Code 501 and 525) and rules and policies governing the correctional facility where the secure residential facility is located.
 - B) A visitor may refuse to submit to a search. However, failure to submit to a search may result in denial, suspension or restriction of visiting privileges.
- 2) Searches of Residents
- A) All residents and their clothing, property, housing and work assignments are subject to search at any time.
 - B) All residents are subject to testing for alcohol or substance use, including but not limited to urinalysis.

SUBPART D: CONDITIONAL RELEASE

Section 299.400 Plans

- a) Following notification by the court that a committed person is

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appropriate for conditional release, the Department shall prepare a plan that identifies the treatment and services that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The Department may contract with a county health department, with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan.

- b) For a committed person who is to be conditionally released under an initial commitment order, the plan shall be presented to the court for its approval within 21 days after the court finding that the person is appropriate for conditional release, unless the Department and the person to be released request additional time to develop the plan.
- c) For a committed person who is to be conditionally released from a secure residential facility, the plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for conditional release, unless the Department and the person to be released request additional time to develop the plan.

Section 299.410 Conditional Release Orders

An order for conditional release places the committed person in the custody and control of the Department, and the person is subject to the conditions set by the court and the rules of the Department.

Section 299.420 Monitoring

The Department may contract with a county health department, or with other public or private agencies, to provide monitoring, treatment and services.

Section 299.430 Revocation

- a) If the Department alleges that a released person has violated any condition or rule, or that the safety of others requires that conditional release be revoked, he or she may be taken into custody pursuant to Section 40 of the Act.
- b) The Department shall submit a statement showing probable cause for the detention and a petition to revoke the order for conditional release to the committing court within 48 hours after the detention.
- c) Pending the revocation hearing, the person may be detained in a jail, a hospital or treatment facility.

SUBPART E: NOTIFICATION OF VICTIMS

Section 299.500 Notification of Victims

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- a) If the court places a committed person on conditional release under Section 40 of the Act or discharges a person under Section 60 or 65, the Department shall notify all of the following who have requested notification under the Act or under the Rights of Crime Victims and Witnesses Act:

- 1) The victim of the act of sexual violence.
 - 2) An adult member of the victim's family, if the victim died as a result of the act of sexual violence.
 - 3) The victim's parent or legal guardian, if the victim is younger than 18 years.
 - 4) The Department of Corrections.
- b) The notice to the Department of Corrections and the person(s) to be notified shall state the name of the person committed under this Act and the date the person is placed on conditional release or discharged. The Department shall send the notice, postmarked at least 7 days before the date the person committed under the Act is placed on conditional release or discharged, to the Department of Corrections and the last-known address of the person(s) to be notified under subsection (a) of this Part.

- c) The Department shall design and prepare cards for persons specified in subsection (a) of this Part to send to the Department. The cards shall have space for these persons to provide their names and addresses, the name of the person committed under this Act and any other information the Department determines is necessary. The Department shall provide the cards, without charge, to the Attorney General and State's Attorneys. The Attorney General and State's Attorneys shall provide the cards, without charge, to persons specified in subsection (a) of this Section. These persons may send completed cards to the Department. All records or portions of records of the Department that relate to mailing addresses of these persons are not part of the resident's file nor subject to inspection or copying under Section 3 of the Freedom of Information Act.
- d) The Department may request victim impact statements for use in conducting evaluations and providing treatment.

SUBPART F: RESIDENT BEHAVIOR MANAGEMENT SYSTEM

Section 299.600 Resident Behavior Management System

The Resident Behavior Management System is a milieu treatment program designed to promote a safe and secure environment for treatment. Abiding by this Part and the rules of the Program and the unit and participating in treatment may be encouraged through the use of positive incentives (e.g., increased level of privileges, special activities, etc.). Behavior that violates this Part or the rules of the Program or the unit shall be discouraged through the withdrawal of positive incentives (e.g., restrictions of privileges and liberties) and redirection to appropriate activities. As determined by the Program Director, the Program may establish differing management levels (e.g., admission status,

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secure management status, general status, high privilege status) to provide a greater degree of individualization in the Resident Behavior Management System.

Section 299.610 Violations of Criminal Law

Where reasonable grounds exist to suspect that a resident has committed a violation of criminal law, it shall be reported to the State's Attorney of the county in which the incident occurred or to the appropriate law enforcement agency official. Such referral is independent of any action under the Resident Behavior Management System.

Section 299.620 Applicability

- a) Program and unit rules are to promote a safe and secure environment for treatment. All residents are expected to comply with the Program and unit rules as well as staff orders. Disagreement with a staff order will be discussed only after the resident has complied with the order. If off unit, disagreements will be discussed only upon return to the unit. In a situation where one or more residents are not following staff orders, staff will implement security measures to ensure everyone's safety and security (e.g., staff may direct all residents to their rooms).
- b) All residents will be given adequate notice of the Program rules and unit rules either directly by staff or presumptively by posting of the rules. Residents shall be informed of the rules upon admission and the specific Program and unit rules shall be posted on the units. Changes in rules shall also be posted on the units. Only those rules that have been posted may be enforced.
- c) Rules apply equally to all residents in similar circumstances. Differences in situations that are relevant to differences in limitations are within staff discretion; however, such differences must be documented and applied within written guidelines for determining aggravating and mitigating circumstances.
- d) The decision that a resident has violated a rule shall be based upon the best available evidence and that evidence must show it is more likely than not that the resident violated the rule. Staff may weigh the credibility of witnesses in making the decision.
- e) Corporal punishment, restrictions on diet, medical or sanitary facilities, clothing, bedding, or legal mail, or access to legal counsel and reductions in the frequency of use of toilets, washbowl and showers shall be prohibited from consideration under the Resident Behavior Management System.

Section 299.630 Rule violation

- a) Behavior that jeopardizes the safety of the residents, staff or others, or the security of the Program or unit, or presents significant management difficulties is considered a major rule

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violation. Behavior that violates this Part or the Program or unit rules, but does not place anyone in jeopardy, compromise the security of the Program or present significant management difficulties, is a minor rule violation. When the classification is unclear, staff has the discretion to determine whether the rule violation is major or minor.

- b) A description of behaviors is included as Appendix A.
- c) Every resident is presumed to be responsible for any contraband or other property that is prohibited by this Part or by Program and unit rules when such contraband or property is located on his or her person, within his or her room or within areas of housing, work, educational or vocational assignment that are under his or her control. Areas under a resident's control include, but are not limited to: the door track, window ledge, ventilation unit, plumbing, and the resident's desk, cabinet, shelving, storage area, bed and bedding materials in the housing assignment; and desk, cubicle, work station and locker in the work, educational or vocational assignment. If the resident produces evidence that convinces the treatment team that he or she did not commit the offense, the resident shall not be given a behavioral restriction.

Section 299.640 Preparation of Incident Reports

- a) Every employee has the duty to observe the conduct of residents. When staff persons detect or observe a rule violation, they will order the resident to stop or redirect the resident to appropriate behavior. Residents are required to comply with staff orders.
- b) If an employee observes a resident engaging in a rule violation, major or minor, discovers evidence of its commission, or receives information from a reliable witness of a rule violation, he or she shall prepare an incident report.
- c) The incident report must be fully completed. The reporting employee shall provide the following information to the extent known or available:
 - 1) The name and identification number of the resident;
 - 2) The place, time and date of the rule violation;
 - 3) The rule violation that the resident is alleged to have committed;
 - 4) A written statement of the conduct observed;
 - 5) The names of residents, employees and visitors who were witnesses;
 - 6) Whether the resident admits to the rule violation; and
 - 7) The signature of the reporting employee.

Section 299.650 Temporary Assignment to Secure Management Status

- a) The Program Director shall determine whether it is necessary to temporarily assign the resident to secure management status in accord

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with Section 299.690 pending a review of the incident report in accordance with Section 299.660. The decision to place a resident in temporary secure management status may be based, among other matters, on:

- 1) The aggressiveness of the resident;
- 2) The threat posed to the safety and security of the facility;
- 3) The need to restrict the resident's access to the general population to protect him from injury or to conduct the review; and/or
- 4) The seriousness of the rule violation.
- b) Residents may be confined in their cells or living areas, in the secure management status confinement area or in any other area designated by the Program Director.
- c) A resident who is charged with a criminal offense arising from rule violation in the Program may remain in secure management status until it is determined by the treatment team that the resident no longer presents an immediate risk of harm to self or others and can be effectively managed in the Program.

Section 299.660 Review of Incident Reports

- a) The Behavior Committee shall review all incident reports involving residents. For the purposes of incident report review, the writer or writers of pertinent incident reports will be excluded from the Committee.
- b) The Behavior Committee shall review the decision to temporarily reassign a resident to secure management status within two business days, whenever possible, and may:
 - 1) Continue the reassignment pending further investigation. Such continued reassignment shall be reviewed within two business days, whenever possible. The Program Director will be notified whenever the resident's temporary reassignment has been continued.
 - 2) Determine that the documented allegations of misconduct do not meet the threshold established in Section 299.620(d) and return the resident to his or her prior management status.
 - 3) Determine that the resident did engage in the reported misconduct and reassign the resident to secure management status.
 - 4) Determine that the resident did engage in the reported misconduct and reassign the resident to a management status that provides appropriate management, treatment, and disciplinary capabilities relative to the resident's misconduct.
- c) Among other matters, the factors listed in Section 299.650(a) may be considered by the Committee in arriving at its decision. Whenever possible a resident who is the subject of an incident report shall be allowed to address the Behavior Committee in order to present his or her views regarding the reported incident. This may be denied if it is determined to be clinically contraindicated, would place a

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resident or others at risk or harm, or would jeopardize the security of the Program.

- d) The Behavior Committee shall document its decision and the reason for that decision in the resident's clinical record. The incident report(s) will be attached to the Committee's documented decision and identifiably referenced within the Committee's documented decision.

Section 299.670 Consequences for Rule Violation

- a) Violations of this Part or of Program or unit rules shall be addressed through: specific, time-limited treatment (e.g., anger management); reassignment of management status; a progressive process of behavioral restrictions; or all three. The Behavior Committee shall determine which consequences are most appropriate.

- 1) Treatment recommendations for rule violation must be logically related to the rule violation (e.g., anger management for reactive, anger-based aggression), must be available, and must have a reasonable expectation of success.

- 2) The Behavior Committee may reassign residents to a more secure management status whenever rule violations indicate that they cannot be effectively managed at their current management status.

- 3) Although progressive in nature, more severe behavioral restrictions may be imposed upon the increased risk of harm or disruption of Program security. Behavioral restrictions may be the restriction of a right for a set period of time, removal of a privilege that the resident has earned through good behavior, or a combination of the two. When possible, the behavioral restrictions should be intrinsically related to the violation of the rules (e.g., a violation of smoking rules could result in a restriction of smoking privileges).

- b) Upon determination that a resident has violated this Part or a Program or unit rule, the Behavior Committee shall determine appropriate management status, determine appropriate treatment recommendations, impose behavioral restrictions, or any combination thereof. The Committee shall also establish time limits on the management status or behavioral restriction or conditions that must be met before removal from a behavior management status or behavioral restriction.

- c) Progressive discipline for residents involves counseling, warnings, and then either summary or formal restrictions. When the severity of the misconduct warrants immediate restrictions, staff may initiate behavioral restrictions subject to approval by the Behavior Committee. Whenever staff has reason to believe that a resident has misbehaved, staff shall inform the resident of the rule violation, the rule(s) that were violated and the fact that it was determined that the resident violated the rule(s), and offer one of the following:

- 1) For minor rule violation only, counseling and warning may occur if staff determines that the resident is unfamiliar with the rule(s) or that the resident's behavior was a technical violation

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of the rule(s), and if staff determines that the objective of the rule(s) would not be met by behavior restrictions. Counseling and warning may occur only once per rule. Counseling is to help the resident identify the rule violations, the consequences of the rule violation and appropriate alternative behaviors. Warnings are to help the resident identify and modify the rule violation to avoid behavioral restrictions. Counseling and warning shall be documented in the resident's clinical record, as shall be the resident's response to the counseling and warning.

- 2) A summary restriction may be offered by the staff and may be accepted or rejected by the resident. Staff must discuss the rule violation and proposed summary with the shift supervisor before offering the summary restriction to the resident. If the summary restriction is rejected, a formal behavioral restriction shall be implemented. Because a summary restriction can be rejected by the resident, it is not reviewable. Summary restrictions cannot last more than 30 days. A summary restriction may be determined inappropriate when it has been previously applied and was ineffective in reducing rule violation or when the Behavior Committee has determined that summary restriction is clinically contraindicated.

- 3) A formal behavioral restriction is imposed when a summary restriction is rejected or when the shift supervisor has determined that summary restrictions are not appropriate. Upon being notified of the application of a formal behavioral restriction, the resident may request a review of the formal behavioral restriction by the treatment team and/or to present information to the treatment team regarding the violation of rule(s), including aggravating or mitigating circumstances. Such request must be in writing and submitted within 24 hours after the notification of formal behavioral restriction. The restriction remains in effect during the review period. The treatment team shall schedule a review within three working days. The resident may present written documentation and discuss circumstances. The resident does not have a right to an advocate, to confront witnesses or to present witnesses. If the treatment team determines the formal behavioral restrictions to be reasonable, it will remain in effect. If the treatment team determines the formal behavioral restriction to be unreasonable it may be increased, reduced or lifted.

Section 299.680 Restitution Procedures

- a) The Behavior Committee may recommend that the resident make restitution in any amount not to exceed actual out-of-pocket expenses or loss caused by the conduct of the resident. Restitution may include performing repairs and cleaning instead of monetary reimbursement. Restitution that consists of labor shall not be

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compensated. The Behavior Committee shall determine the amount and the conditions of payment.

- b) If the Program Director concurs with the recommendation of the Behavior Committee and determines that restitution for damage to property or person is appropriate, it shall ask the resident to agree to perform the necessary labor or authorize disbursement from his or her trust fund or from any other account of the resident.

- 1) If the resident agrees to make restitution he or she shall sign an agreement to perform labor or an authorization for disbursement of funds either to the State or appropriate individual.
- 2) If the resident refuses to agree to perform labor or authorize disbursement of his or her current funds or future earnings in accordance with the Program Director's determination, the Program Director may recommend that a hold be placed on the resident's account for such amount, and may further recommend that commissary privileges and/or State pay be suspended in whole or in part for a definite period of time. However, the resident shall be permitted to retain a sufficient amount of funds to purchase basic personal hygiene items if such items are not provided by the facility.
- c) The Behavior Committee may consider the resident's willingness to make restitution in imposing any other behavioral restrictions.
- d) A resident shall not be subjected to greater behavioral restrictions because he or she is without funds and therefore unable to make restitution.
- e) In the event a resident is released prior to full payment of restitution, arrangements shall be made for payment of the balance of the authorized restitution.

Section 299.690 Placement in Secure Management Status

Residents whose behaviors place themselves or others in immediate risk of harm or who cannot be effectively managed may be confined in their cells or living areas, in the secure management status area or in any other area designated by the Program Director. Placement in secure management status confinement does not eliminate any other summary restriction or formal behavioral restriction that has been placed on a resident.

Section 299.700 Secure Management Status Confinement Standards

Standards for living conditions in secure management status confinement shall include the following provisions:

- a) Residents in secure management status confinement shall be permitted personal property as allowed and ordered by the Program Director for safety and security reasons.
- b) Commissary privileges comparable to those applicable to the general population shall be allowed, except for restrictions on certain items

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that may be ordered by the Program Director for safety and security reasons.

- c) Residents in secure management status confinement shall receive food comparable to that provided to the general population.
- d) Visits shall be permitted as approved by the Program Director after considering safety and security concerns.
- e) Medical personnel shall visit the secure management status confinement area to screen requests for medical attention, and a physician or psychiatrist shall visit the area on a weekly basis.
- f) A chaplain designated by the Program Director shall visit the secure management status confinement area when a chaplain is present on institutional grounds, when possible, but not less than once a week.
- g) Each resident in secure management status confinement shall be contacted by a primary therapist at least every week or more often if clinically warranted.
- h) Continued involvement in programs may be permitted on an individual basis, as approved by the Program Director.
- i) Residents shall be afforded the opportunity for a minimum of one hour exercise outside their cells per week. However, out of cell exercise may be temporarily restricted or suspended, unless medically contraindicated, if the Program Director determines the activity to be a threat to the safety and security of the facility or any person.
- j) Residents in secure management status confinement shall have the same mail privileges as those provided for other residents.
- k) Residents in secure management status confinement shall be permitted reading materials.

SUBPART G: RESIDENT GRIEVANCES

Section 299.800 Filing of Grievances

- a) A resident shall first attempt to resolve incidents, problems or complaints other than complaints concerning behavior review proceedings, through his or her primary therapist. If a resident is unable to resolve a complaint informally, or if the complaint concerns a disciplinary proceeding, he or she may file a written grievance on a grievance form that shall be made available in all living units. A grievance shall be filed within one month after the discovery of the incident, occurrence, or problem that gives rise to the grievance or within one month after the receipt of a decision concerning an informal resolution thereof. However, if a resident can demonstrate that a grievance was not timely filed for good cause, the grievance shall be considered.
- b) The grievance form shall be addressed to the Program Director and shall be deposited in the living unit mailbox or other designated repository.
- c) Staff assistance shall be available for those residents who cannot prepare their grievances unaided as determined by institutional staff.

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- 1) All residents shall be entitled to invoke the grievance procedure regardless of their status or classification.
- 2) Each facility shall take reasonable steps to ensure that the grievance procedure is accessible to residents who are impaired or disabled.
- d) Residents must be informed of the grievance procedure and may request further information regarding the procedure from their primary therapists.
 - 1) The written procedure shall be available to all residents.
 - 2) A resident unable to speak or read the English language may request that the procedure be explained in his or her own language.
- e) Actions or reprisals may not be taken against a resident for using the grievance procedure. A resident may submit a grievance alleging that a reprisal has been made against him or her.

Section 299.810 Grievance Examiner

- a) The Program Director shall appoint two or more employees who may serve as a Grievance Examiner to attempt to resolve problems, complaints and grievances that residents have been unable to resolve through routine channels.
- b) No person who is directly involved in the subject matter of the grievance or who was a member of the Behavior Committee that heard an incident report concerning the grievance, or who is otherwise not impartial, may serve as the Grievance Examiner reviewing that particular case.

Section 299.820 Grievance Procedures

- a) A Program Director shall review grievances at least weekly, provided that one or more grievances have been filed. The Program Director shall determine whether to refer a grievance to a Grievance Examiner or to the treatment team for resolution.
- b) The Program Director shall submit a copy of any grievance alleging discrimination based on disability to the facility Americans With Disabilities Act (ADA) Coordinator. The facility ADA Coordinator shall conduct such investigation as deemed appropriate and make recommendations to the Program Director for resolution of the grievance.
- c) A resident may be afforded an opportunity to appear before the Grievance Examiner or treatment team. The Examiner may call witnesses as deemed appropriate.
- d) The Grievance Examiner or treatment team shall consider the grievance and report findings and recommendations in writing to the Program Director within 15 working days after the grievance is received by the Grievance Examiner or treatment team, whenever possible. The Program Director shall advise the resident of the decision in writing within

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10 working days after receiving the Grievance Examiner's or treatment team's report, whenever possible.

Section 299.830 Emergency Procedures

- a) If the Program Director determines that there is a substantial risk of imminent personal injury or other serious or irreparable harm to the resident, the grievance shall be handled on an emergency basis.
- b) The Program Director shall respond to the resident within three days after receipt of the grievance indicating what action shall be or has been taken.

Section 299.840 Appeals

- a) If, after receiving the response of the Program Director, the resident still feels that the problem, complaint or grievance has not been resolved to his or her satisfaction, he or she may appeal in writing to the Program Administrator within 30 days after receipt of the response. Copies of the Grievance Examiner's or treatment team's report and the Program Director's decision should be attached.
- b) The Program Administrator shall review the grievance and the responses of the Grievance Examiner and Program Director. If it is determined that the grievance is without merit, the resident shall be advised of this disposition, in writing, within 30 working days after receipt of the grievance.
- c) The Program Administrator may call witnesses or examine records at his or her discretion. The Program Administrator shall make a final determination of the grievance within 45 working days, whenever possible. The resident shall be sent a copy of the Program Administrator's decision.

Section 299.850 Records

- a) Records regarding the filing and disposition of grievances shall be collected and maintained by the institution for at least three years following final disposition of the grievance.
- b) Records regarding the participation of a resident during the grievance process shall be handled in a manner designed to protect confidentiality as determined by the Program Director.

SUBPART H: EVALUATION AND RESEARCH

Section 299.900 Program Evaluation

The Department may evaluate the whole, or any part of, the Sexually Violent Persons Treatment Program for the purpose of quality assurance and improvement.

Section 299.910 Research

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This Subpart applies to any person or entity seeking to conduct a research or evaluation study on residents within the Department.

Section 299.920 Requirements for Submitting Research Proposals

- a) Any request to conduct research or an evaluation study involving former or present residents and/or employees, programs or facilities, whether originating inside or outside the Department, shall be in writing and shall be submitted to the Secretary for review and authorization.
- b) The person or entity requesting the research or study shall provide the following written documentation prior to approval of the request:
 - 1) A formal research proposal including name(s) and vitae of the researcher(s); abstract of the project, including purpose, methodology, duration, the number of subjects, amount of time required for each subject, and dissemination plan; and Department resources to be utilized;
 - 2) Approval obtained from a Human Subjects Research Committee and Institutional Review Board, where applicable;
 - 3) A signed Research Agreement that shall contain a statement that any rights of privacy, informed consent, confidentiality and protection from harm are met in accordance with accepted professional and scientific ethics and that the requirements of any applicable Illinois and federal statute or regulation have been and will continue to be met; and
 - 4) Any other information deemed necessary to the authorization process.

Section 299.930 Criteria for Approval or Denial of Research Proposals

- a) The request to conduct research or an evaluation study shall be reviewed to determine if the proposed study is ethical, feasible, methodologically sound, and relevant to the needs and goals of the Department.
- b) Requests to conduct research or an evaluation study may be denied for reasons that may include, among other factors, the nature and risk of the research, concern for security, and the level of demand on staff time and Department finances.
- c) Research projects involving use of residents in medical, cosmetic, or pharmaceutical experiments shall not be permitted.

Section 299.940 Requirements for Conducting Research Projects

- a) The researcher shall provide periodic reports on the progress of the research project as required. Any changes in the scope or methodology of the project shall be reported.
- b) Permission to conduct the current study and any further research may be discontinued for, among other matters, violation of Department

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rules or security requirements or for violation of applicable Illinois or federal statute or regulations. The factors to be considered in determining whether to discontinue a project shall include, but not be limited to: whether the violation was intentional; the seriousness of the violation; whether the project is placing greater demands on Department resources than originally stated; or whether the project has been expanded beyond the stated purpose and scope of the project.

- c) Prior to publication of the results of a research project, the researcher shall provide copies of the material accepted for publication to the Department for informational purposes.
- d) Following publication, additional copies may be provided for the Department without cost, if so specified in the signed Research Agreement.

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Section 299. APPENDIX A Rule Violations

AIDING AND ABETTING, ATTEMPT, SOLICITATION OR CONSPIRACY

Definition: Aiding and abetting any person in the commission of any of these rule violations; attempting to commit any of these rule violations; soliciting another to commit any of these rule violations; or conspiring to commit any of these rule violations, shall be considered the same as the commission of the rule violation itself.

MAJOR RULE VIOLATION:

ARSON

Definition: Setting fire in any location, whether public or private, including but not limited to any part of the institution, its grounds or State vehicles.

BATTERY TO ANY PERSON

Definition: Causing a person or an object to come into contact with another person in an offensive, provocative or injurious manner, or fighting with a weapon.

BRIBERY & EXTORTION

Definition: Demanding or receiving anything of value in exchange for protection, to avoid bodily injury, or through duress or pressure. Giving or receiving money or anything of value, to violate State or federal law or to commit any act prohibited under this Part.

CONCEALMENT OF IDENTITY

Definition: Wearing a disguise or a mask, impersonating another, or otherwise concealing one's identity.

DAMAGE OR MISUSE OF PROPERTY

Definition: Destroying, damaging, defacing, removing, altering, tampering with, or otherwise misusing State property or property of another person, including the obstruction of locks or security devices.

DANGEROUS CONTRABAND

Definition: Possessing, manufacturing, introducing, selling, supplying to others or using without authorization any explosive, acid, caustic material for incendiary devices, ammunition, dangerous chemical, escape material, knife, sharpened instrument, gun, firearm, razor, glass, bludgeon, brass knuckles or any other dangerous or deadly weapon or substance of like character, or any

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object that is made to appear to be a deadly or dangerous weapon or substance.

DANGEROUS DISTURBANCES

Definition: Causing, directing or participating in any action that may seriously disrupt or endanger the institution, persons or property, including the taking or holding of hostages by force or threat of force.

DRUGS AND DRUG PARAPHERNALIA

Definition: Possessing, manufacturing, introducing, selling, supplying to others, or receiving alcohol, any intoxicant, inhalant, narcotic, syringe, needle, controlled substance or marijuana, or being under the influence of any of the above substances. This violation includes medication misuse, e.g., the possession or use of unauthorized amounts of prescribed medication, or selling or supplying prescribed medication to others.

ESCAPE

Definition: Leaving or failing to return to lawful custody without authorization.

FAILURE TO REPORT

Definition: Failure to report for a scheduled work, educational or program assignment without good cause.

FIGHTING

Definition: Unauthorized fighting with another consenting person, which is not likely to cause serious bodily injury to one or the other, and which does not involve the use of a weapon.

FORGERY

Definition: Forging, counterfeiting or reproducing without authorization any document, article of identification, money, security or official paper.

GANG OR UNAUTHORIZED ORGANIZATIONAL ACTIVITY

Definition: Engaging or pressuring others to engage in gang or unauthorized organizational activities or meetings; displaying, wearing, possessing or using gang or unauthorized organizational insignia or materials; or giving gang or unauthorized organizational signs.

GIVING FALSE INFORMATION TO AN EMPLOYEE

Definition: Lying or knowingly providing false information to an employee that

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impedes an investigation or otherwise interferes with the management of the Program.

INTIMIDATION OR THREATS

Definition: Expressing by words, actions or other behavior an intent to injure any person that creates the reasonable belief that physical, monetary or economic harm to that person or to another will result.

SEXUAL MISCONDUCT

Definition: Engaging in sexual intercourse, sexual conduct or fondling, or touching done to sexually arouse either or both persons; or engaging in any of these activities with an animal.

THEFT

Definition: Taking property belonging to another person, entity, or the institution without the owner's authorization.

UNAUTHORIZED COMMUNICATION

Definition: Communicating, without prior authorization, by any means (mail, telephone, or through intermediaries) with any victim or the family of any victim of sexual violence, staff (except at the Program) or the family of staff, or any party that has requested no further communication.

UNAUTHORIZED MOVEMENT

Definition: Being anywhere without authorization, or being absent from where required to be.

UNAUTHORIZED PROPERTY

Definition: Possessing, giving, loaning, receiving or using property that an inmate has no authorization to have or to receive and that was not issued to him or her through regular procedures, including the unauthorized possession of food or clothing, or the possession of property in excess of that authorized by the institution.

VIOLATING STATE OR FEDERAL LAWS

Definition: Committing any act that would constitute a violation of State or federal law. If the specific violation is stated elsewhere in this Part, a committed person may not be accused of this violation. The State or federal offense must be specified in the disciplinary report.

MINOR RULE VIOLATION:

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ABUSE OF PRIVILEGES

Definition: Violating any rule regarding visits, mail, yard, commissary, telephone or recreational activities. However, if the conduct also constitutes a criminal offense under federal or State law, a committed person may also be charged under Violation of State or Federal Laws.

DISOBEYING A DIRECT ORDER

Definition: Willfully refusing to comply with an order, including the refusal to participate in testing for drug abuse or to accept a housing assignment.

GAMBLING

Definition: Operating or playing a game of chance or skill for anything of value, making a bet upon the outcome of any event, or possessing any gambling device.

HEALTH, SMOKING OR SAFETY VIOLATIONS

Definition: Smoking in an unauthorized area; tattooing or ear or nose piercing; or disregarding basic hygiene of person, cell, living or work area, or other place in the facility or on its grounds.

INOLENCE

Definition: Talking, touching, gesturing or other behavior that harasses, annoys or shows disrespect.

PETITIONS AND BUSINESS VENTURES

Definition: Writing, signing or circulating a petition without authorization or engaging in an unauthorized business venture.

POSSESSION OF MONEY

Definition: Possessing or causing to be brought into the institution, United States coin or currency or a negotiable instrument.

TRADING OR TRAFFICKING

Definition: Trading or trafficking with any employee, visitor or resident.

TRANSFER OF FUNDS

Definition: Causing money to be transferred from one trust fund to another or through an outside source to the account of another resident or an inmate.

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VIOLATION OF RULES

Definition: Willfully disobeying any rule of the facility.

DEPARTMENT OF HUMAN SERVICES
NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS

1) Heading of the Part: Individual Care Grants for Mentally Ill Children

2) Code Citation: 59 Ill. Adm. Code 135

3) Register Citation to Notice of Proposed Rules: 22 Ill. Reg. 17205
(October 2, 1998)

4) Date, Time and Location of Public Hearing:

Tuesday, December 1, 1998
10:00 A.M. - 12:00 P.M.
Lincoln Library
Carnegie Rm.
326 S. 7th Street
Springfield, Illinois

5) Other Pertinent Information: The hearing will be held for the sole purpose of gathering public comments on the proposed Amendments. Persons interested in presenting testimony at this hearing are advised that the Illinois Department of Human Services will adhere to the following procedures in the conduct of the hearing:

- 1) No oral testimony shall exceed an aggregate of ten (10) minutes. All persons wishing to provide oral testimony must register by 11:00 A.M.
- 2) Each person presenting oral testimony shall provide to the hearing officer a written (preferably typed) copy of such testimony at the time the oral testimony is presented. No oral testimony will be accepted without a written copy of the testimony being provided.
- 3) No person will be recognized to speak for a second time until all persons wishing to testify have done so.
- 4) In order to provide for a balanced presentation of views and to facilitate the orderly conduct of the hearing, the hearing officer may impose such other rules of procedures, including the order of call of witnesses, as she/he deems necessary.
- 5) Persons requiring reasonable accommodation due to disability must contact the Bureau of Administrative Rules and Procedures by November 23, 1998.

6) Name and Address of Agency Contact Person: Questions regarding these proposed Amendments or the public hearing shall be directed to:

Ms. Susan Weir, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services

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NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS

100 South Grand Avenue East
3rd Floor, Harris Bldg.
Springfield, IL 62762
(217) 785-9772

POLLUTION CONTROL BOARD

REQUEST FOR EXPEDITED CORRECTION

- 1) Heading of the Part: Emission Standards and Limitations For Mobile Sources
- 2) Code Citation: 35 Ill. Adm. Code 240
- 3) Section numbers: Table C
- 4) Date Proposal published in Illinois Register: February 6, 1998, 22 Ill. Reg. 2720
- 5) Date Adoption published in Illinois Register: July 24, 1998, 22 Ill. Reg. 13723
- 6) Summary and Purpose of Expedited Correction: Table C of Part 240 was adopted by the Board in docket R98-24 on July 8, 1998, and published in the *Illinois Register* at 22 Ill. Reg. 13723 (July 24, 1998). Thereafter, the Joint Committee on Administrative Rules (JCAR) identified several numerical value errors in the published text in Table C, subsection (c), entitled "Vehicle Exhaust Emissions Fast-Pass Standards. The numerical values adopted by the Board on July 8, 1998, differed from the agreement certified by JCAR during the Second Notice period. See 5 ILCS 100/5-85. On September 17, 1998, the Board adopted an order to expedite publication of the rules containing the intended numerical values in Table C. The intention to correct these numerical values in subsection (c) was articulated in the Board's final opinion of July 8, 1998. See In the Matter of: Enhanced Vehicle Inspection and Maintenance (I/M) Regulations: Amendments to 35 Ill. Adm. Code 240 (July 8, 1998), R98-24, slip op. at 17-18.

Seven additional numerical errors were identified by the Board in subsections (a), (b), and (c) of Table C. The Board's intent to correct these numerical values in subsections (a), (b), and (c) was articulated in the Board's second notice opinion of May 21, 1998. See In the Matter of: Enhanced Vehicle Inspection and Maintenance (I/M) Regulations: Amendments to 35 Ill. Adm. Code 240 (May 21, 1998), R98-24, slip op. at 3, 17-18.

A final typographical error was made in the hydrocarbon composite at second 212 in subsection (c). The Board inadvertently changed this value from 3.745 to 3.778. It intended to change the numerical value for the hydrocarbon composite at second 213 in subsection (c). Thus, this inadvertent change is a typographical error and the numerical value for the hydrocarbon composite at second 212 should remain 3.745.

The above mentioned numerical corrections to Table C are required by Sections 182(b) and 182(c) of the Clean Air Act, as amended in 1990 (42 USC 7582(b)(1990)), which require the use of enhanced I/M programs in areas that do not meet the National Ambient Air Quality Standards for ozone or carbon monoxide. Pursuant to Section 13B-5 of the Illinois

POLLUTION CONTROL BOARD

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Vehicle Emissions Inspection Law [625 ILCS 5/13B-5], Chicago and Metro-East St. Louis are subject to these I/M regulations.

In order to satisfy the requirements of the Clean Air Act, among other things, Illinois was required to adopt fast-pass standards (found at Section 240.164 and Table C). USEPA developed the fast-pass standards as a tool for prescreening clean vehicles from the I/M exhaust emission test (57 Fed. Reg. 52950 (November 5, 1992)). Table C contains the new vehicle exhaust emission fast-pass standards, and according to Section 240.164, these are the standards to be applied to vehicles that must be inspected pursuant to Section 240.161.

In its posthearing comments during First Notice in this rulemaking, the Illinois Environmental Protection Agency noted that it had utilized the outdated guidance when it calculated some of the numerical values in Table C. Upon recalculation utilizing the most recent High Tech Guidance, the Agency concluded that several values needed to be changed. The aforementioned 21 numerical values were inadvertently not corrected in subsections (a), (b), and (c) of the Board's final order dated July 8, 1998; however, the intent to make these corrections is reflected in its second and final notice opinions.

7) Information and questions regarding this request shall be directed to:

Name: Amy Muran Felton
Address: 100 W. Randolph St.
Suite 11-500
Chicago IL 60601
Telephone: 312/814-7011

POLLUTION CONTROL BOARD

REQUEST FOR EXPEDITED CORRECTION

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE B: AIR POLLUTION

CHAPTER I: POLLUTION CONTROL BOARD

SUBCHAPTER k: EMISSION STANDARDS AND LIMITATIONS
FOR MOBILE SOURCES

PART 240

MOBILE SOURCES

SUBPART A: DEFINITIONS AND GENERAL PROVISIONS

Section	
240.101	Preamble
240.102	Definitions
240.103	Prohibitions
240.104	Inspection
240.105	Penalties
240.106	Determination of Violation
240.107	Incorporations by Reference

SUBPART B: EMISSIONS

Section	
240.121	Smoke Emissions
240.122	Diesel Engine Emissions Standards for Locomotives
240.123	Liquid Petroleum Gas Fuel Systems
240.124	Vehicle Exhaust Emission Standards
240.125	Compliance Determination

SUBPART C: HEAVY-DUTY DIESEL SMOKE OPACITY STANDARDS AND TEST PROCEDURES

Section	
240.140	Applicability
240.141	Heavy-Duty Diesel Vehicle Smoke Opacity Standards and Test Procedures

SUBPART D: STEADY-STATE IDLE MODE TEST EMISSION STANDARDS

Section	
240.151	Applicability
240.152	Steady-State Idle Mode Vehicle Exhaust Emission Standards
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SUBPART E: TRANSIENT LOADED MODE TEST EMISSION STANDARDS

Section	
240.161	Applicability
240.162	Vehicle Exhaust Emission Start-Up Standards
240.163	Vehicle Exhaust Emission Final Standards

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240.164 Vehicle Exhaust Emission Fast-Pass Standards
240.165 Compliance Determination

SUBPART F: EVAPORATIVE TEST STANDARDS

Section

240.171 Applicability
240.172 Evaporative System Integrity Test Standards
240.173 Evaporative System Purge Test Standards (Repealed)

SUBPART G: ON-ROAD REMOTE SENSING TEST EMISSION STANDARDS

Section

240.181 Applicability
240.182 On-Road Remote Sensing Emission Standards
240.183 Compliance Determination

SUBPART H: ON-BOARD DIAGNOSTIC TEST STANDARDS

Section

240.191 Applicability
240.192 On-Board Diagnostic Test Standards
240.193 Compliance Determination

APPENDIX A Rule into Section Table

APPENDIX B Section into Rule Table

TABLE A Vehicle Exhaust Emission Start-Up Standards

TABLE B Vehicle Exhaust Emission Final Standards

TABLE C Vehicle Exhaust Emission Fast-Pass Standards

AUTHORITY: Implementing Sections 9, 10 and 13 and authorized by Sections 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/9, 10, 13, 27, and 28.5] and Section 13B-20 of the Vehicle Emissions Inspection Law of 1995 [625 ILCS 5/13B-20] (see Section 10 of P.A. 90-475, effective August 16, 1997).

SOURCE: Adopted as Chapter 2: Air Pollution, Part VII: Mobile Sources, filed and effective April 14, 1972; codified at 7 Ill. Reg. 13628; amended in R85-25, at 10 Ill. Reg. 11277, effective June 16, 1986; amended in R90-20 at 16 Ill. Reg. 6184, effective April 7, 1992; amended in R94-20 at 18 Ill. Reg. 18013, effective December 12, 1994; amended in R94-19 at 18 Ill. Reg. 18228, effective December 20, 1994; amended in R98-24 at 22 Ill. Reg. 13723, effective July 13, 1998; expedited correction at 22 Ill. Reg. _____, effective _____.

BOARD NOTE: This Part implements the Environmental Protection Act as of July 1, 1994.

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Section 240. TABLE C Vehicle Exhaust Emission Fast-Pass Standards

a) Vehicles having composite hydrocarbon emission limitations of less than 1.25 grams per mile, and composite carbon monoxide emission limitations of less than 20.0 grams per mile, in Section 240. Table A or Section 240. Table B:

Second	Hydrocarbons		Carbon Monoxide	
	Composite	Phase 2	Composite	Phase 2
30	0.124	N/A	0.693	N/A
31	0.126	N/A	0.773	N/A
32	0.129	N/A	0.837	N/A
33	0.135	N/A	0.851	N/A
34	0.140	N/A	0.853	N/A
35	0.146	N/A	0.857	N/A
36	0.150	N/A	0.900	N/A
37	0.153	N/A	0.960	N/A
38	0.156	N/A	1.034	N/A
39	0.160	N/A	1.070	N/A
40	0.165	N/A	1.076	N/A
41	0.169	N/A	1.083	N/A
42	0.172	N/A	1.102	N/A
43	0.173	N/A	1.111	N/A
44	0.177	N/A	1.114	N/A
45	0.197	N/A	1.157	N/A
46	0.200	N/A	1.344	N/A
47	0.208	N/A	1.482	N/A
48	0.221	N/A	1.530	N/A
49	0.232	N/A	1.542	N/A
50	0.235	N/A	1.553	N/A
51	0.238	N/A	1.571	N/A
52	0.240	N/A	1.595	N/A
53	0.242	N/A	1.633	N/A
54	0.246	N/A	1.685	N/A
55	0.249	N/A	1.689	N/A
56	0.252	N/A	1.693	N/A
57	0.261	N/A	1.700	N/A
58	0.271	N/A	1.723	N/A
59	0.276	N/A	1.852	N/A
60	0.278	N/A	1.872	N/A
61	0.280	N/A	1.872	N/A
62	0.282	N/A	1.872	N/A
63	0.283	N/A	1.900	N/A
64	0.284	N/A	1.917	N/A
65	0.285	N/A	1.944	N/A
66	0.286	N/A	2.000	N/A
67	0.288	N/A	2.060	N/A
68	0.291	N/A	2.064	N/A

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69	0.294	N/A	2.076	N/A	117
70	0.296	N/A	2.104	N/A	118
71	0.298	N/A	2.117	N/A	119
72	0.300	N/A	2.125	N/A	120
73	0.302	N/A	2.130	N/A	121
74	0.304	N/A	2.138	N/A	122
75	0.307	N/A	2.152	N/A	123
76	0.308	N/A	2.170	N/A	124
77	0.308	N/A	2.188	N/A	125
78	0.308	N/A	2.200	N/A	126
79	0.314	N/A	2.212	N/A	127
80	0.320	N/A	2.212	N/A	128
81	0.324	N/A	2.221	N/A	129
82	0.327	N/A	2.222	N/A	130
83	0.329	N/A	2.227	N/A	131
84	0.333	N/A	2.236	N/A	132
85	0.336	N/A	2.243	N/A	133
86	0.339	N/A	2.262	N/A	134
87	0.343	N/A	2.271	N/A	135
88	0.347	N/A	2.284	N/A	136
89	0.350	N/A	2.299	N/A	137
90	0.356	N/A	2.308	N/A	138
91	0.358	N/A	2.326	N/A	139
92	0.360	N/A	2.330	N/A	140
93	0.363	N/A	2.331	N/A	141
94	0.367	N/A	2.344	N/A	142
95	0.370	N/A	2.347	N/A	143
96	0.372	N/A	2.355	N/A	144
97	0.376	N/A	2.395	N/A	145
98	0.388	N/A	2.451	N/A	146
99	0.396	N/A	2.508	N/A	147
100	0.405	N/A	2.590	N/A	148
101	0.410	N/A	2.660	N/A	149
102	0.411	N/A	2.749	N/A	150
103	0.412	N/A	2.913	N/A	151
104	0.413	N/A	3.162	N/A	152
105	0.421	N/A	3.170	N/A	153
106	0.428	N/A	3.197	N/A	154
107	0.430	N/A	3.288	N/A	155
108	0.455	N/A	3.419	N/A	156
109	0.459	0.015	3.587	0.168	157
110	0.462	0.017	3.595	0.173	158
111	0.464	0.021	3.640	0.237	159
112	0.466	0.024	3.740	0.266	160
113	0.468	0.024	3.868	0.280	161
114	0.471	0.025	3.877	0.291	162
115	0.488	0.026	3.934	0.314	163
116	0.513	0.029	4.015	0.331	164

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117	0.538	0.032	4.061	0.345
118	0.561	0.035	4.063	0.350
119	0.577	0.035	4.079	0.356
120	0.580	0.036	4.140	0.367
121	0.586	0.038	4.185	0.388
122	0.594	0.040	4.199	0.407
123	0.603	0.041	4.205	0.463
124	0.610	0.042	4.212	0.480
125	0.615	0.042	4.232	0.506
126	0.624	0.042	4.298	0.518
127	0.628	0.045	4.344	0.522
128	0.632	0.046	4.361	0.525
129	0.637	0.046	4.366	0.528
130	0.641	0.049	4.369	0.530
131	0.643	0.050	4.372	0.530
132	0.644	0.052	4.435	0.534
133	0.645	0.054	4.523	0.550
134	0.647	0.054	4.524	0.554
135	0.651	0.054	4.525	0.590
136	0.658	0.055	4.531	0.616
137	0.663	0.055	4.534	0.639
138	0.666	0.056	4.542	0.653
139	0.668	0.059	4.553	0.662
140	0.670	0.061	4.554	0.683
141	0.672	0.061	4.554	0.696
142	0.675	0.061	4.554	0.708
143	0.678	0.063	4.554	0.721
144	0.681	0.064	4.554	0.739
145	0.684	0.065	4.554	0.742
146	0.686	0.066	4.554	0.743
147	0.688	0.067	4.554	0.745
148	0.690	0.068	4.554	0.748
149	0.692	0.069	4.554	0.751
150	0.694	0.070	4.554	0.762
151	0.696	0.071	4.556	0.789
152	0.698	0.072	4.556	0.790
153	0.700	0.073	4.565	0.794
154	0.702	0.073	4.612	0.799
155	0.704	0.074	4.834	0.805
156	0.706	0.077	5.702	0.842
157	0.708	0.079	5.841	0.990
158	0.710	0.082	6.170	1.038
159	0.712	0.082	6.670	1.357
160	0.716	0.086	7.425	1.455
161	0.750	0.095	8.379	1.546
162	0.784	0.107	9.648	1.824
163	0.805	0.115	10.918	2.746
164	0.840	0.122	12.157	3.073

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165	0.853	0.127	12.731	3.633
166	0.874	0.159	12.831	4.505
167	0.903	0.186	12.892	4.952
168	0.910	0.189	12.932	5.254
169	0.914	0.200	13.702	5.730
170	0.916	0.220	14.139	6.051
171	0.919	0.236	14.964	6.333
172	0.931	0.247	15.704	6.490
173	0.948	0.257	16.253	6.796
174	0.983	0.267	16.907	7.205
175	1.018	0.283	17.655	8.151
176	1.027	0.295	18.020	8.230
177	1.035	0.312	18.349	8.584
178	1.051	0.318	18.671	8.800
179	1.074	0.323	18.972	8.847
180	1.084	0.337	19.228	8.913
181	1.099	0.345	20.123	9.122
182	1.121	0.350	20.405	9.532
183	1.132	0.359	20.754	10.256
184	1.152	0.387	21.684	10.862
185	1.161	0.398	21.955	10.996
186	1.168	0.400	22.650	11.206
187	1.175	0.402	22.989	11.514
188	1.181	0.405	23.535	11.894
189	1.188	0.418	23.876	12.019
190	1.203	0.429	24.018	12.170
191	1.219	0.442	24.464	12.517
192	1.233	0.457	24.685	12.598
193	1.251	0.473	24.931	12.625
194	1.255	0.487	25.188	12.653
195	1.258	0.501	25.468	12.777
196	1.265	0.510	25.627	12.906
197	1.280	0.512	25.746	12.989
198	1.293	0.514	25.850	13.060
199	1.301	0.516	25.974	13.165
200	1.313	0.518	26.141	13.242
201	1.324	0.527	26.225	13.412
202	1.332	0.540	26.338	13.662
203	1.341	0.547	26.547	13.773
204	1.357	0.553	26.818	13.942
205	1.375	0.559	27.052	14.090
206	1.392	0.563	27.393	14.224
207	1.408	0.567	27.501	14.426
208	1.422	0.571	27.632	14.498
209	1.433	0.575	27.803	14.776
210	1.443	0.579	27.953	14.907
211	1.453	0.595	28.205	14.916
212	1.463	0.605	28.543	15.014

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213	1.468	0.614	28.997	15.221
214	1.470	0.622	29.000	15.472
215	1.474	0.627	29.005	15.555
216	1.478	0.638	29.081	15.652
217	1.481	0.643	29.281	15.969
218	1.484	0.643	29.483	16.028
219	1.487	0.645	29.734	16.375
220	1.490	0.651	29.803	16.487
221	1.493	0.655	29.821	16.524
222	1.504	0.663	29.847	16.578
223	1.522	0.671	29.862	16.684
224	1.547	0.675	29.873	16.755
225	1.549	0.684	30.008	16.770
226	1.562	0.694	30.126	16.805
227	1.574	0.701	30.127	16.865
228	1.579	0.702	30.127	16.960
229	1.584	0.708	30.208	16.960
230	1.589	0.708	30.314	16.962
231	1.590	0.709	30.323	16.988
232	1.596	0.710	30.325	17.072
233	1.598	0.710	30.368	17.094
234	1.604	0.711	30.411	17.184
235	1.610	0.712	30.416	17.187 ¹⁸⁹
236	1.612	0.712	30.426	17.188
237	1.613	0.712	30.430	17.189
238	1.614	0.713	30.452	17.241
239	1.615	0.716	30.488	17.370

b) Vehicles having composite hydrocarbon emission limitations of at least 1.25 grams per mile but less than 2.00 grams per mile, and composite carbon monoxide emission limitations of at least 20.0 grams per mile but less than 30.0 grams per mile, in Section 240, Table A or Section 240, Table B:

Hydrocarbons				Carbon Monoxide	
Second		Composite	Phase 2	Composite	Phase 2
30	31	0.247	N/A	1.502	N/A
31	32	0.253	N/A	1.546	N/A
32	33	0.258	N/A	1.568	N/A
33	34	0.263	N/A	1.582	N/A
34	35	0.268	N/A	1.593	N/A
35	36	0.277	N/A	1.602	N/A
36	37	0.283	N/A	1.621	N/A
37	38	0.293	N/A	1.631	N/A
38	39	0.297	N/A	1.702	N/A
39	40	0.298	N/A	1.784	N/A
40	41	0.313	N/A	1.879	N/A
41	42	0.320	N/A	2.162	N/A
42		0.327	N/A	2.307	N/A

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43	0.342	N/A	2.343	N/A
44	0.360	N/A	2.376	N/A
45	0.376	N/A	2.406	N/A
46	0.389	N/A	2.433	N/A
47	0.408	N/A	2.458	N/A
48	0.423	N/A	2.483	N/A
49	0.434	N/A	2.774	N/A
50	0.444	N/A	2.844	N/A
51	0.454	N/A	2.900	N/A
52	0.465	N/A	2.936	N/A
53	0.472	N/A	3.133	N/A
54	0.478	N/A	3.304	N/A
55	0.485	N/A	3.407	N/A
56	0.493	N/A	3.456	N/A
57	0.500	N/A	3.480	N/A
58	0.505	N/A	3.518	N/A
59	0.514	N/A	3.560	N/A
60	0.537	N/A	3.593	N/A
61	0.540	N/A	3.628	N/A
62	0.543	N/A	3.641	N/A
63	0.546	N/A	3.655	N/A
64	0.551	N/A	3.680	N/A
65	0.559	N/A	3.700	N/A
66	0.567	N/A	3.728	N/A
67	0.575	N/A	3.857	N/A
68	0.588	N/A	3.894	N/A
69	0.595	N/A	3.943	N/A
70	0.601	N/A	3.983	N/A
71	0.606	N/A	4.009	N/A
72	0.610	N/A	4.023	N/A
73	0.617	N/A	4.023	N/A
74	0.631	N/A	4.053	N/A
75	0.643	N/A	4.063	N/A
76	0.651	N/A	4.077	N/A
77	0.659	N/A	4.225	N/A
78	0.667	N/A	4.243	N/A
79	0.676	N/A	4.260	N/A
80	0.681	N/A	4.282	N/A
81	0.685	N/A	4.322	N/A
82	0.689	N/A	4.398	N/A
83	0.694	N/A	4.482	N/A
84	0.700	N/A	4.515	N/A
85	0.705	N/A	4.518	N/A
86	0.709	N/A	4.520	N/A
87	0.713	N/A	4.522	N/A
88	0.717	N/A	4.522	N/A
89	0.721	N/A	4.523	N/A
90	0.724	N/A	4.526	N/A

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91	0.727	N/A	4.527	N/A
92	0.729	N/A	4.527	N/A
93	0.731	N/A	4.528	N/A
94	0.734	N/A	4.528	N/A
95	0.740	N/A	4.528	N/A
96	0.748	N/A	4.529	N/A
97	0.759	N/A	4.575	N/A
98	0.771	N/A	4.703	N/A
99	0.783	N/A	4.805	N/A
100	0.793	N/A	4.886	N/A
101	0.810	N/A	4.957	N/A
102	0.823	N/A	5.104	N/A
103	0.836	N/A	5.340	N/A
104	0.853	N/A	5.496	N/A
105	0.871	N/A	5.625	N/A
106	0.887	N/A	5.815	N/A
107	0.899	N/A	6.473	N/A
108	0.931	N/A	7.037	N/A
109	0.947	0.040	7.419	0.246
110	0.957	0.047	7.643	0.257
111	0.965	0.052	7.759	0.286
112	0.971	0.056	7.824	0.379
113	0.977	0.061	7.889	0.425
114	0.983	0.064	7.960	0.457
115	1.003	0.072	8.024	0.477
116	1.030	0.081	8.076	0.494
117	1.041	0.082	8.111	0.504
118	1.050	0.083	8.130	0.512
119	1.052	0.092	8.148	0.519
120	1.055	0.094	8.211	0.529
121	1.061	0.097	8.478	0.529
122	1.071	0.100	8.548	0.530
123	1.081	0.103	8.561	0.531
124	1.091	0.106	8.568	0.532
125	1.102	0.108	8.572	0.533
126	1.110	0.110	8.584	0.548
127	1.116	0.112	8.592	0.610
128	1.121	0.114	8.596	0.614
129	1.125	0.116	8.597	0.622
130	1.128	0.118	8.601	0.631
131	1.130	0.120	8.605	0.640
132	1.132	0.122	8.608	0.646
133	1.134	0.123	8.626	0.650
134	1.135	0.124	8.650	0.652
135	1.143	0.127	8.660	0.738
136	1.147	0.130	8.767	0.754
137	1.156	0.134	9.029	0.780
138	1.163	0.139	9.238	0.795

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139	1.186	0.146	9.389	0.804
140	1.253	0.149	9.493	0.810
141	1.262	0.151	9.583	0.815
142	1.271	0.153	9.626	0.818
143	1.277	0.155	9.669	0.821
144	1.283	0.157	9.716	0.825
145	1.291	0.162	9.763	0.840
146	1.294	0.164	9.809	0.847
147	1.296	0.166	9.852	0.855
148	1.298	0.168	9.885	0.865
149	1.303	0.169	9.932	0.874
150	1.316	0.170	9.986	0.891
151	1.330	0.171	10.039	0.914
152	1.342	0.172	10.072	0.929
153	1.348	0.173	10.090	0.937
154	1.353	0.175	10.105	0.942
155	1.362	0.178	10.146	0.949
156	1.365	0.180	10.245	1.375
157	1.366	0.189	10.397	1.576
158	1.373	0.198	10.923	1.943
159	1.397	0.203	11.970	2.820
160	1.422	0.207	13.421	3.281
161	1.440	0.214	15.289	3.483
162	1.452	0.221	15.912	3.620
163	1.465	0.229	16.530	4.168
164	1.509	0.247	17.622	4.338
165	1.533	0.274	18.366	4.682
166	1.555	0.309	19.869	5.633
167	1.576	0.318	20.711	6.137
168	1.598	0.322	22.319	6.853
169	1.618	0.333	23.751	7.136
170	1.636	0.343	24.842	7.320
171	1.666	0.356	25.410	7.685
172	1.685	0.385	25.798	8.052
173	1.726	0.409	26.122	8.344
174	1.742	0.433	26.353	8.602
175	1.756	0.453	26.638	8.898
176	1.769	0.463	27.219	9.251
177	1.784	0.507	27.279	10.253
178	1.802	0.523	27.320	10.828
179	1.822	0.528	27.352	10.933
180	1.843	0.541	27.822	11.060
181	1.864	0.549	28.763	11.188
182	1.884	0.559	29.402	11.345
183	1.896	0.571	29.971	11.733
184	1.915	0.584	30.276	12.598
185	1.940	0.598	30.988	12.953
186	1.958	0.613	31.095	13.213

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187	1.972	0.624	31.314	14.131
188	1.985	0.629	31.833	14.839
189	1.991	0.629	32.239	15.137
190	1.993	0.638	32.547	15.138
191	1.995	0.648	32.855	15.141
192	2.001	0.659	33.153	15.595
193	2.015	0.663	33.444	15.658
194	2.031	0.671	33.482	15.704
195	2.047	0.681	33.516	15.729
196	2.063	0.693	33.549	16.058
197	2.079	0.709	33.653	16.987
198	2.094	0.725	33.973	17.064
199	2.109	0.740	34.159	17.073
200	2.122	0.754	34.191	17.153
201	2.130	0.767	34.250	17.332
202	2.137	0.775	34.469	17.406
203	2.157	0.787	34.716	17.641
204	2.172	0.795	34.969	17.922
205	2.194	0.803	35.144	18.484
206	2.222	0.854	35.418	18.553
207	2.245	0.859	35.766	18.658
208	2.268	0.872	35.949	18.953
209	2.279	0.892	36.010	19.266
210	2.288	0.896	36.548	19.309
211	2.301	0.903	37.179	19.731
212	2.316	0.924	37.651	19.902
213	2.332	0.938	38.041	20.012
214	2.345	0.941	38.591	20.260
215	2.354	0.951	38.852	20.739
216	2.362	0.966	38.861	21.346
217	2.368	0.979	38.926	21.810
218	2.376	0.980	39.194	22.001
219	2.384	0.981	39.474	22.290
220	2.391	1.005	39.668	22.324
221	2.395	1.016	39.781	22.343
222	2.400	1.022	39.890	22.522
223	2.405	1.028	39.954	22.661
224	2.409	1.035	39.984	22.666
225	2.413	1.041	39.989	22.667
226	2.415	1.045	39.990	22.668
227	2.417	1.051	39.990	22.669
228	2.419	1.055	39.990	22.670
229	2.420	1.059	39.991	22.671
230	2.421	1.062	40.012	22.672
231	2.423	1.063	40.061	22.673
232	2.425	1.063	40.116	22.673
233	2.427	1.063	40.249	22.673
234	2.429	1.064	40.253	22.673

POLLUTION CONTROL BOARD

REQUEST FOR EXPEDITED CORRECTION

235	2.430	1.064	40.290	2322.674
236	2.431	1.066	40.385	2322.675
237	2.432	1.069	40.488	2322.675
238	2.433	1.072	40.720	2322.675
239	2.434	1.075	40.763	2322.677
c) Vehicles having composite hydrocarbon emission limitations of 2.00 grams per mile or greater, and composite carbon monoxide emission limitations of 30.0 grams per mile or greater in Section 240. Table A or Section 240. Table B:				

Second	Hydrocarbons		Carbon Monoxide	
	Composite	Phase 2	Composite	Phase 2
30	0.407	N/A	3.804	N/A
31	0.415	N/A	3.985	N/A
32	0.423	N/A	4.215	N/A
33	0.436	N/A	4.440	N/A
34	0.451	N/A	4.579	N/A
35	0.464	N/A	4.688	N/A
36	0.468	N/A	4.749	N/A
37	0.475	N/A	4.783	N/A
38	0.487	N/A	4.813	N/A
39	0.506	N/A	4.876	N/A
40	0.530	N/A	5.104	N/A
41	0.549	N/A	5.217	N/A
42	0.569	N/A	5.383	N/A
43	0.588	N/A	5.571	N/A
44	0.609	N/A	5.888	N/A
45	0.621	N/A	6.199	N/A
46	0.636	N/A	6.245	N/A
47	0.649	N/A	6.318	N/A
48	0.666	N/A	6.418	N/A
49	0.679	N/A	6.540	N/A
50	0.696	N/A	6.690	N/A
51	0.712	N/A	6.875	N/A
52	0.727	N/A	7.029	N/A
53	0.745	N/A	7.129	N/A
54	0.760	N/A	7.359	N/A
55	0.776	N/A	7.722	N/A
56	0.797	N/A	8.017	N/A
57	0.814	N/A	8.249	N/A
58	0.826	N/A	8.425	N/A
59	0.837	N/A	8.563	N/A
60	0.849	N/A	8.686	N/A
61	0.862	N/A	8.804	N/A
62	0.872	N/A	8.916	N/A
63	0.887	N/A	9.025	N/A
64	0.895	N/A	9.138	N/A
65	0.903	N/A	9.250	N/A

POLLUTION CONTROL BOARD

REQUEST FOR EXPEDITED CORRECTION

66	0.925	N/A	9.354	N/A
67	0.933	N/A	9.457	N/A
68	0.945	N/A	9.575	N/A
69	0.959	N/A	9.728	N/A
70	0.970	N/A	9.938	N/A
71	0.980	N/A	10.140	N/A
72	0.988	N/A	10.222	N/A
73	0.997	N/A	10.261	N/A
74	1.022	N/A	10.278	N/A
75	1.037	N/A	10.290	N/A
76	1.051	N/A	10.715	N/A
77	1.064	N/A	10.790	N/A
78	1.075	N/A	10.844	N/A
79	1.087	N/A	10.921	N/A
80	1.097	N/A	11.010	N/A
81	1.105	N/A	11.090	N/A
82	1.114	N/A	11.136	N/A
83	1.136	N/A	11.136	N/A
84	1.160	N/A	11.165	N/A
85	1.182	N/A	11.191	N/A
86	1.201	N/A	11.205	N/A
87	1.217	N/A	11.211	N/A
88	1.233	N/A	11.211	N/A
89	1.248	N/A	11.211	N/A
90	1.262	N/A	11.211	N/A
91	1.271	N/A	11.220	N/A
92	1.279	N/A	11.294	N/A
93	1.287	N/A	11.332	N/A
94	1.295	N/A	11.355	N/A
95	1.302	N/A	11.383	N/A
96	1.309	N/A	11.410	N/A
97	1.316	N/A	11.433	N/A
98	1.325	N/A	11.516	N/A
99	1.339	N/A	11.820	N/A
100	1.356	N/A	12.104	N/A
101	1.365	N/A	12.344	N/A
102	1.378	N/A	12.781	N/A
103	1.397	N/A	13.472	N/A
104	1.420	N/A	14.405	N/A
105	1.445	N/A	14.808	N/A
106	1.470	N/A	14.965	N/A
107	1.491	N/A	15.121	N/A
108	1.506	N/A	15.372	N/A
109	1.517	0.151	15.530	1.113
110	1.528	0.159	15.687	1.213
111	1.542	0.172	16.018	1.344
112	1.559	0.186	16.527	1.399
113	1.578	0.199	16.810	1.520

POLLUTION CONTROL BOARD

REQUEST FOR EXPEDITED CORRECTION

114	1.594	0.207	16.961	1.640	162
115	1.605	0.216	17.120	1.684	163
116	1.615	0.229	17.135	1.693	164
117	1.625	0.235	17.249	1.786	165
118	1.642	0.240	17.451	2.007	166
119	1.670	0.245	17.509	2.084	167
120	1.694	0.261	17.605	2.179	168
121	1.705	0.267	17.734	2.264	169
122	1.717	0.277	18.049	2.328	170
123	1.732	0.287	18.447	2.375	171
124	1.747	0.298	18.592	2.437	172
125	1.763	0.308	18.657	2.543	173
126	1.779	0.316	18.796	2.593	174
127	1.795	0.322	18.952	2.641	175
128	1.810	0.329	19.137	2.663	176
129	1.823	0.338	19.329	2.672	177
130	1.835	0.346	19.519	2.676	178
131	1.845	0.354	19.707	2.683	179
132	1.854	0.356	19.882	2.817	180
133	1.862	0.357	19.905	2.992	181
134	1.870	0.359	20.049	3.111	182
135	1.883	0.362	20.460	3.234	183
136	1.888	0.364	20.746	3.304	184
137	1.896	0.368	21.068	3.310	185
138	1.911	0.378	21.380	3.320	186
139	1.928	0.391	21.748	3.354	187
140	1.949	0.402	22.046	3.436	188
141	1.969	0.408	22.348	3.443	189
142	1.982	0.422	22.397	3.452	190
143	1.999	0.428	22.407	3.490	191
144	2.011	0.432	22.417	3.552	192
145	2.022	0.434	22.922	3.588	193
146	2.035	0.439	22.951	3.600	194
147	2.043	0.450	22.976	3.616	195
148	2.049	0.460	23.017	3.627	196
149	2.063	0.467	23.073	3.636	197
150	2.085	0.472	23.161	3.676	198
151	2.104	0.480	23.218	3.882	199
152	2.117	0.491	23.253	4.011	200
153	2.127	0.503	23.337	4.047	201
154	2.138	0.505	23.425	4.067	202
155	2.152	0.515	23.534	4.081	203
156	2.168	0.522	23.652	4.116	204
157	2.186	0.527	23.739	4.251	205
158	2.205	0.537	24.606	5.099	206
159	2.224	0.549	25.615	5.383	207
160	2.242	0.568	26.073	6.362	208
161	2.268	0.586	28.496	7.926	209

POLLUTION CONTROL BOARD

REQUEST FOR EXPEDITED CORRECTION

162	2.308	0.610	29.772	8.429
163	2.352	0.648	31.056	9.201
164	2.406	0.677	33.351	10.825
165	2.421	0.699	34.890	12.291
166	2.435	0.720	35.937	13.366
167	2.470	0.738	37.012	14.428
168	2.501	0.767	37.892	15.318
169	2.537	0.828	39.028	15.699
170	2.571	0.855	40.406	16.073
171	2.625	0.869	41.379	16.475
172	2.657	0.885	42.033	17.158
173	2.683	0.900	42.432	17.532
174	2.701	0.941	42.742	17.965
175	2.717	0.979	43.399	18.242
176	2.732	1.002	43.895	18.283
177	2.756	1.025	44.227	18.480
178	2.781	1.047	44.926	19.576
179	2.811	1.065	45.256	20.015
180	2.853	1.089	45.553	20.203
181	2.898	1.109	45.753	20.433
182	2.946	1.133	46.210	21.025
183	2.988	1.158	47.017	21.882
184	3.023	1.184	48.185	22.204
185	3.057	1.209	48.741	22.859
186	3.076	1.222	49.462	23.533
187	3.101	1.231	50.313	24.281
188	3.120	1.239	51.285	25.078
189	3.136	1.254	52.076	25.276
190	3.151	1.278	52.857	25.578
191	3.163	1.300	52.876	25.859
192	3.209	1.313	53.067	25.985
193	3.223	1.324	53.777	26.153
194	3.237	1.340	54.242	26.582
195	3.263	1.367	54.489	27.067
196	3.302	1.387	54.601	27.456
197	3.338	1.402	54.912	27.805
198	3.372	1.417	55.588	28.070
199	3.390	1.432	56.266	28.590
200	3.428	1.446	56.617	28.914
201	3.470	1.460	56.863	29.063
202	3.493	1.477	57.204	29.502
203	3.509	1.492	57.371	29.697
204	3.522	1.501	57.713	29.713
205	3.533	1.510	57.728	29.783
206	3.550	1.522	58.097	29.942
207	3.578	1.561	58.572	30.284
208	3.607	1.585	59.024	30.755
209	3.630	1.597	59.321	31.287

POLLUTION CONTROL BOARD

REQUEST FOR EXPEDITED CORRECTION

210	3.658	1.607	59.715	31.549
211	3.701	1.627	60.045	31.820
212	3.745778	1.645	60.453	32.250
213	3.778776	1.656	60.935	32.546
214	3.814	1.663	61.307	32.808
215	3.825	1.669	61.666	33.060
216	3.835	1.674	62.148	33.204
217	3.844	1.685	62.532	33.341
218	3.853	1.700	62.546	33.414
219	3.864	1.704	62.559	33.514
220	3.874	1.706	62.570	33.640
221	3.891	1.709	62.846	334.692
222	3.928	1.711	63.097	334.711
223	3.966	1.714	63.150	334.733
224	4.008	1.718	63.150	334.770
225	4.010	1.721	63.150	334.796
226	4.012	1.723	63.150	334.810
227	4.016	1.726	63.150	334.821
228	4.019	1.729	63.150	334.839
229	4.057	1.731	63.150	334.865
230	4.065	1.733	63.150	334.894
231	4.071	1.735	63.150	334.918
232	4.073	1.743	63.150	334.944
233	4.075	1.749	63.150	334.985
234	4.077	1.753	63.153	34.014
235	4.079	1.757	63.159	34.032
236	4.081	1.762	63.173	34.051
237	4.083	1.767	63.193	34.067
238	4.084	1.772	63.214	34.079
239	4.085	1.776	63.233	34.085

(Source: Expedited correction at 22 Ill. Reg. _____, effective _____)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLYSTATEMENT OF OBJECTION
TO PROPOSED RULEMAKING

ILLINOIS COMMERCE COMMISSION

Heading of the Part: Electric ReliabilityCode Citation: 83 Ill. Adm. Code 411Section Numbers: 411.90Date Originally Published in the Illinois Register: 6/26/98
22 Ill Reg 10945

At its meeting on October 20, 1998, the Joint Committee on Administrative Rules objected to Section 411.190 "Approval of Vegetation Management Programs" of the Illinois Commerce Commission's rulemaking entitled "Electric Reliability" (83 Ill. Adm. Code 411; 22 Ill. Reg. 10945) because the Commission lacks clear statutory authority to allow Commission-approved utility tariffs for vegetation management practices to pre-empt contrary municipal ordinances.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall constitute withdrawal of this proposed rulemaking. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

NOTICE OF FAILURE TO REMEDY
DEPARTMENT OF REVENUE

- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill Adm Code 130
- 3) Section Numbers: 130.1945
Action:
Refusal to Remedy in Response to JCAR
Objection
- 4) Notice of Proposal published in Illinois Register: 1/23/98
- 5) Date of JCAR issued Statement of Objection: 6/16/98
- 6) Summary of Action taken by the Agency: The Committee objected to the Department's rulemaking because the Department is proposing to remove from rule a provision that accurately states that agricultural co-operative associations are not primarily engaged in rendering services. Deletion of this long-existing depiction of the purpose and practice of agricultural co-operatives could have a negative economic impact on them and their members, and DOR has shown no persuasive public purpose to be served by doing so. If the Department believes Illinois agricultural co-operative associations should have different status under Illinois law, it should seek enactment of a statute altering that status.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION
TO PROPOSED RULEMAKING

ILLINOIS COMMERCE COMMISSION

Heading of the Part: Non-Discrimination in Affiliate Transactions for Electric Utilities

Code Citation: 83 Ill. Adm. Code 450

Section Numbers: 450.10 540.20
450.25 450.30
450.40 450.50
450.60 450.70
450.80 450.85
450.90 450.100
450.110 450.120
450.130 450.140
450.150 450.160

Date Originally Published in the Illinois Register: 6/26/98
22 Ill Reg 10947

At its meeting on October 20, 1998, the Joint Committee on Administrative Rules objected to ICC's rule entitled "Non-Discrimination in Affiliate Transactions for Electric Utilities" (83 Ill. Adm. Code 450; 22 Ill. Reg. 10947) because the provision requiring utility maintenance of logs for transactions between the utility and its affiliates in competition with AXES is unduly burdensome to justify the public interest served.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall constitute withdrawal of this proposed rulemaking. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION
TO PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

Heading of the Part: Contract Procurement

Code Citation: 44 Ill Adm Code 660

Section Numbers: 660.100(c)(5)

Date Originally Published in the Illinois Register: 6/5/98
22 Ill Reg 9470

At its meeting on October 20, 1998, the Joint Committee on Administrative Rules objected to Section 660.100(c)(5) of the Department of Transportation's rulemaking entitled "Contract Procurement" (44 Ill Adm Code 660; 22 Ill Reg 9470) because the rulemaking is not in compliance with distinct statutory requirements for the publication of change orders.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall constitute withdrawal of this proposed rulemaking. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of October 20, 1998 through October 26, 1998 and have been scheduled for review by the Committee at its November 17, 1998 meeting in Springfield. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rule should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start Of First Notice</u>	<u>JCAR Meeting</u>
12/4/98	Department of Transportation, Oversize and Overweight Permit Movements on State Highways (92 Ill Adm Code 554)	8/28/98 22 Ill Reg 15555	11/17/98
12/4/98	Office of the State Fire Marshal, Fire Prevention and Safety (41 Ill Adm Code 100)	9/4/98 22 Ill Reg 15862	11/17/98
12/4/98	Department of the Lottery, Lottery (General) (11 Ill Adm Code 1770)	7/31/98 22 Ill Reg 14094	11/17/98
12/4/98	Department of Natural Resources, The Illinois Oil and Gas Act (62 Ill Adm Code 240)	7/6/98 22 Ill Reg 11301	11/17/98
12/4/98	Department of Nuclear Safety, Quality Standards and Certification Requirements for Facilities Performing Mammography (32 Ill Adm Code 370)	8/14/98 22 Ill Reg 14610	11/17/98
12/4/98	Secretary of State, Certificates of Title, Registration of Vehicles (92 Ill Adm Code 1010)	9/4/98 22 Ill Reg 15951	11/17/98
12/9/98	Department of Agriculture, Definitions (8 Ill Adm Code 20)	9/4/98 22 Ill Reg 15801	11/17/98
12/9/98	Department of Agriculture, Livestock Auction Markets (8 Ill Adm Code 40)	9/4/98 22 Ill Reg 15838	11/17/98

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

12/9/98	Department of Agriculture, Hatcheries, Poultry Flocks, and Produce Thereof (8 Ill Adm Code 55)	9/4/98 22 Ill Reg 15820	11/17/98		
12/9/98	Department of Agriculture, Bovine Brucellosis (8 Ill Adm Code 75)	9/4/98 22 Ill Reg 15794	11/17/98		
12/9/98	Department of Agriculture, Illinois Bovidae and Cervidae Tuberculosis Eradication Act (8 Ill Adm Code 80)	9/4/98 22 Ill Reg 15825	11/17/98		
12/9/98	Department of Agriculture, Diseased Animals (8 Ill Adm Code 85)	9/4/98 22 Ill Reg 15808	11/17/98		
12/9/98	Department of Agriculture, Swine Brucellosis (8 Ill Adm Code 100)	9/4/98 22 Ill Reg 15847	11/17/98		
12/9/98	Department of Agriculture, Swine Disease Control and Eradication Act (8 Ill Adm Code 105)	9/4/98 22 Ill Reg 15850	11/17/98		
12/9/98	Department of Agriculture, Animal Diagnostic Laboratory Act (8 Ill Adm Code 110)	9/4/98 22 Ill Reg 15783	11/17/98		
12/9/98	Department of Agriculture, Illinois Pseudo-rabies Control Act (8 Ill Adm Code 115)	9/4/98 22 Ill Reg 15831	11/17/98		
12/9/98	Department of Agriculture, Feeder Swine Dealer Licensing (68 Ill Adm Code 590)	9/4/98 22 Ill Reg 15817	11/17/98		
12/9/98	Department of Agriculture, Livestock Dealer Licensing (68 Ill Adm Code 610)	9/4/98 22 Ill Reg 15843	11/17/98		
12/9/98	Department of Human Services, Child Care (89 Ill Adm Code 50)	7/17/98 22 Ill Reg 12425	11/17/98		
12/9/98	Department of Human Services, Provider Requirements, Type Services, and Rates of Payment (89 Ill Adm Code 686)		12/9/98		8/14/98 22 Ill Reg 14518

SECOND NOTICES RECEIVED

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

PROCLAMATION

98-600

CATALINA FLEET 21 - CHICAGO REGION 25TH ANNIVERSARY WEEK

Whereas, Catalina Fleet 21 - Chicago Region was formed on June 21, 1973, to promote the pleasure and interest of the owners of Catalina sailboats, their families and crews; and

Whereas, Catalina Fleet 21 - Chicago Region provides instruction in the art of sailing as well as a forum for the exchange of ideas and the promotion of social activities; and

Whereas, Catalina Fleet 21 - Chicago Region promotes good relations between the fleet and local marine dealers; and

Whereas, Catalina Fleet 21 - Chicago Region is celebrating its 25th Anniversary in 1998;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim November 8-14, 1998, as CATALINA FLEET 21 - CHICAGO REGION 25TH ANNIVERSARY WEEK in Illinois.

Issued by Governor, October 13, 1998.

Filed by Secretary of State, October 23, 1998.

98-601

GEORGE HYLAND DAY

Whereas, George Joseph Hyland was born October 19, 1923, in Chicago, Illinois, the first child of George and Catherine Cotter Hyland; and

Whereas, George graduated from Quigley Preparatory Seminary in 1941, from Loyola University of Chicago in 1948 with a Bachelor's Degree in Philosophy, and in 1955 with Bachelor of Science in Business Administration; and

Whereas, from September 1943 to December 1946, Lieutenant Hyland served in the United States Army Air Corps; and

Whereas, on April 30, 1949, he married Mary Alicia (Rice) Hyland; they were married 31 years until her death on May 25, 1980. On October 6, 1984, he married Dorothy Loretta (Bright)(McCarthy) Hyland. They live in Skokie, Illinois; and

Whereas, George is the father of six children and their spouses: George Robert Hyland, Thomas Arthur Hyland, Mary Ellen Hyland, William Gerard Hyland, and Patrick Edward Hyland. He is the stepfather of four children and their spouses: Richard Michael McCarthy, Robert Patrick McCarthy, Elizabeth Ann (McCarthy) Hirsh, and Thomas Joseph McCarthy; and

Whereas, George is the grandfather of five grandchildren and step-grandfather of four grandchildren; and

Whereas, for over 37 years, George was a trusted, dedicated, and valuable employee of Blue Cross/Blue Shield until his retirement in March 1986, and

Whereas, throughout his lifetime George has been an active member of the Catholic Church, and he is an inspiration and blessing to all who know him;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim, October 19, 1998 as GEORGE HYLAND DAY in Illinois.

Issued by Governor, October 15, 1998.

Filed by Secretary of State, October 23, 1998.

98-602

DOUGLAS L. SUTTON, SR. DAY

Whereas, Douglas L. Sutton, Sr. owns and operates three businesses in Springfield, Illinois; and

Whereas, Douglas L. Sutton, Sr. is a member of numerous professional associations including the Home Builders Association of Illinois and the Springfield Home Builders Association; and

Whereas, Douglas L. Sutton, Sr. is involved in the Springfield community by working with organizations like the Optimist Club of Springfield and Habitat for Humanity; and

Whereas, Douglas L. Sutton, Sr. has received several prestigious awards including the 1979 Man of the Year Award from Alisco/Atlantic Richfield, the honor of being a 1995 delegate to the White House Conference for Small Businesses and the recipient of the 1997-98 Optimist International Award of Distinguished President;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim October 22, 1998, as DOUGLAS L. SUTTON, SR. DAY in Illinois.

Issued by Governor, October 19, 1998.

Filed by Secretary of State, October 23, 1998.

98-603

ELIM CHRISTIAN SCHOOL DAY

Whereas, Elim Christian School began its ministry with five students in a church basement and has grown and prospered to the present 32-acre campus where it serves 600 students and clients; and

Whereas, this ministry has served thousands of disabled special-needs children, adults and their families; and

Whereas, Elim provides educational, residential, adult work, and discovery network services; and

Whereas, Elim is celebrating its Golden 50th Anniversary this year;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim October 30, 1998, as ELIM CHRISTIAN SCHOOL DAY in Illinois.

Issued by Governor, October 19, 1998.

Filed by Secretary of State, October 23, 1998.

98-604

ST. JOHN FISHER CHURCH HERITAGE DAY

Whereas, 400 years following the 1535 execution of John Cardinal Fisher, Bishop of Rochester, St. John Fisher was solemnly canonized by Pope Pius XI; and

Whereas, on July 19, 1948, Samuel Cardinal Stritch, Archbishop of Chicago, appointed the Reverend John B. Heldmann to be the first pastor of a newly erected parish to be known as St. John Fisher Parish; and

Whereas, St. John Fisher School, first opened for 310 students on September 15, 1950, meets the educational needs of many of our state's youth; and

Whereas, many organizations associated with St. John Fisher Parish, including the Women's Club and the Holy Name Society both founded in 1948, serve the needs of the community; and

Whereas, St. John Fisher Church will celebrate its 50th anniversary as a

faith community with Mass and a dinner dance on October 25, 1998;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim October 25, 1998, as ST. JOHN FISHER CHURCH HERITAGE DAY in Illinois.

Issued by Governor, October 19, 1998.

Filed by Secretary of State, October 23, 1998.

98-605

WINTER WEATHER PREPAREDNESS WEEK

Whereas, nearly 1 million motorists in Illinois will become "winter casualties" this year; and

Whereas, preparing your car for winter and using good judgment can help save your life; and

Whereas, the AAA-Chicago Motor Club urges motorists to prepare their vehicle for cold weather and to avoid skidding during adverse conditions; and

Whereas, the American Red Cross urges motorists to prepare a winter care emergency kit to store in the car; and

Whereas, the Illinois Department of Transportation warns motorists to be cautious when driving around snow plows and salt trucks; and

Whereas, the Illinois Toll Highway Authority reminds motorists to drive defensively and to reduce speed to accommodate traffic and roadway conditions; and

Whereas, the Illinois State Police publicize emergency road condition telephone numbers and advise motorists to remain in their car until help arrives; and

Whereas, the Illinois Emergency Management Agency warns against unnecessary travel when winter storms threaten; and

Whereas, the National Weather Service urges motorists to become familiar with weather watch/warning terminology; and

Whereas, Illinois Ice Pack is a public relations coalition of state, federal and private agencies that brings the messages of these and other groups together to save lives by increasing public awareness concerning winter preparedness;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim November 15-21, 1998, as WINTER WEATHER PREPAREDNESS WEEK in Illinois and urge motorists throughout Illinois to heed the precautions set forth by the Illinois Ice Pack to ensure safe winter driving.

Issued by Governor, October 19, 1998.

Filed by Secretary of State, October 23, 1998.

98-606

ADOPTION AWARENESS MONTH

Whereas, adoption is a rewarding and enriching experience for all involved; and

Whereas, an adoptive family provides a child with a stable, loving home; and

Whereas, Illinois has become a nationally recognized leader in adoption recruitment, having in the past year nearly doubled the number of adoptions of children under the state's care waiting to be adopted; and

Whereas, on any given day, approximately 700 are awaiting adoption in our state, and among them are African American children of all ages, Caucasian and

Latino youngsters primarily of school age, brothers and sisters who want to be adopted together into the same family, and children with special medical, emotional or educational needs; and

Whereas, the Illinois Department of Children and Family Services; One Church, One Child; the Child Care Association of Illinois; the Adoption Information Center of Illinois; Corporate Partnership for the Recruitment of Adoptive Families; the Village Investment Project; the Illinois Adoptive Parent Organization; and the many Illinois adoptive parent groups encourage all families to consider adopting a child in need of a home; and

Whereas, to draw attention to Illinois' waiting children and the need for adoptive families, several activities will be held during November;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim November 1998 as ADOPTION AWARENESS MONTH in Illinois.

Issued by Governor, October 20, 1998.

Filed by Secretary of State, October 23, 1998.

98-607

ANTIOCH MISSIONARY BAPTIST CHURCH WEEK

Whereas, the Antioch Missionary Baptist Church was organized and chartered in November of 1923; and

Whereas, Dr. W. N. Daniel has served as pastor of the Antioch Missionary Baptist Church for 41 years; and

Whereas, the Antioch Missionary Baptist Church has distinguished itself as one of the first churches to develop housing for the elderly, disabled and low income families in the Chicagoland area; and

Whereas, the Antioch Missionary Baptist Church has renovated and maintains more than 900 living units; and

Whereas, the Antioch Missionary Baptist Church is celebrating its 75th anniversary with a week of guest pastors and commemorative services;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim November 2-8, 1998, as ANTIOCH MISSIONARY BAPTIST CHURCH WEEK in Illinois.

Issued by Governor, October 20, 1998.

Filed by Secretary of State, October 23, 1998.

98-608

DR. CURTIS J. KROCK RECOGNITION DAY

Whereas, Dr. Curtis J. Krock portrays the highest attributes associated with doctors of medicine; and

Whereas, Dr. Krock is committed to the human aspects of caring, compassion and understanding as well as the scientific approaches to healing; and

Whereas, Dr. Krock has been with the Carle Clinic Association for over 25 years and is one of the top doctors in the nation; and

Whereas, Dr. Krock currently serves as Head of Carle Clinic's Department of Medicine and as a clinical assistant professor at the University of Illinois College of Medicine; and

Whereas, Dr. Krock was chosen by President Clinton as a 1998 "Hometown Hero;" and

Whereas, Dr. Krock will be honored by Carle Clinic for his devotion and service to the citizens of Illinois;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim

November 5, 1998, as DR. CURTIS J. KROCK RECOGNITION DAY in Illinois.

Issued by Governor, October 20, 1998.

Filed by Secretary of State, October 23, 1998.

98-609

CHICAGO EAST FIELD OFFICE DAY

Whereas, the Chicago East Field Office of the Social Security Administration (SSA) is considered an exemplary, community-based, public service institution that is a credit to the SSA; and

Whereas, the Chicago East Field Office has created a supportive environment for its employees; and

Whereas, since 1939, the staff of the Chicago East Field Office has established a legacy of providing world-class services to its intergenerational customers within the State of Illinois, Cook County, and the City of Chicago; and

Whereas, the Chicago East Field Office staff is dedicated, hard working and diligent in carrying out its assigned duties, and continually assuring the integrity of all Social Security Administrative programs; and

Whereas, the Chicago East Field Office is instrumental in rebuilding public confidence in the long-term solvency of the Social Security Trust Funds, Retirement and Survivors Insurance, Disability Insurance, and Supplemental Security Income Programs; and

Whereas, the Chicago East Field Office is frequently cited by the Social Security Administration for successfully processing critical workload assignments that lead to improved service delivery for the agency and cost-effective savings to the taxpayers; and

Whereas, the employees of the Chicago East Field Office have a tradition of implementing a good neighbor policy and perennially contribute thousands of dollars to the financially less fortunate, through the Combined Federal Campaign (CFC) and other local, charitable, gift-giving initiatives;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim October 22, 1998, as CHICAGO EAST FIELD OFFICE DAY in Illinois.

Issued by Governor, October 21, 1998.

Filed by Secretary of State, October 23, 1998.

98-610

OPTICIANS MONTH

Whereas, good vision greatly improves a person's quality of life; and

Whereas, approximately 60 percent of all Americans, more than 161 million individuals, use eyeglasses, contact lenses or some other vision aid; and

Whereas, dispensing opticians provide the technical expertise and skill needed to fabricate and fit eyeglasses, contact lenses and low vision aids to ensure that every individual has the best vision possible; and

Whereas, dispensing opticians through programs of state licensure and national certification demonstrate their superb qualifications as members of the vision care delivery team; and

Whereas, dispensing opticians assure that eyewear is available within a wide range of types and brands to fit every consumer's taste and economic means; and

Whereas, Illinois' dispensing opticians are joining with the Opticians

Association of America to observe January 1999 as National Opticians Month; Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim January 1999 as OPTICIANS MONTH in Illinois.

Issued by Governor, October 21, 1998.

Filed by Secretary of State, October 23, 1998.

Rules acted upon during the period from October 16 (Issue 42, 1998) through December 28, 1998 (Issue 52) are listed in the Issues Index by Title number, Part number and Issue number. For example, 50 Ill. Adm. Code 4401 published in Issue 40 will be listed as 50-4401-40. The letter "R" designates a rule that is being repealed. Inquiries about the Issues Index may be directed to the Administrative Code Division at 217-782-4414 or jnatale@ccgate.sos.state.il.us (Internet address).

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